

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

William K. Saunders on behalf of himself and
those similarly situated,

Plaintiffs,

v.

Margaritaville of Myrtle Beach, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2016-CP-26-

COMPLAINT
Jury Trial Demanded

2016 APR -1 PM 2:03
HORRY COUNTY
CLERK OF COURT

Now comes William L. Saunders (Named Plaintiff), on behalf of himself and those similarly situated (Plaintiffs), by and through counsel, and respectfully shows unto this Court:

INTRODUCTION

This case arises out of Defendant's, Margaritaville of Myrtle Beach, LLC, unlawful pay practices and policies. Specifically, for at least the last three years Defendant has willfully required its tip employees to perform work without pay under the penalty of being fired so Defendant would not have to pay a minimum or overtime wage to its tip employees. As a result of Defendant's willfully engaged unlawful pay practices and policies, Defendant's tip employees have been robbed of their earned minimum wages, overtime wages, and other benefits that they are entitled to under federal law.

JURISDICTION AND VENUE

1. Named Plaintiff is a citizen and resident of Horry County, South Carolina.
2. That upon information and belief, Defendant Margaritaville of Myrtle Beach, LLC is incorporated and existing under the laws of the State of South Carolina. Defendant is vicariously liable for the acts and/or omissions of its employees, agents, contractors, and servants under the

doctrine of *respondeat superior*. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

3. The parties to this action and the acts and omissions complained of herein are subject to the jurisdiction of this Court and venue is proper.

FAIR LABOR STANDARDS ACT COLLECTIVE ACTION ALLEGATIONS

4. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

5. Named Plaintiff brings this action for violations of the Fair Labor Standards Act ("FLSA") as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of all persons presently and formerly employed by Defendant in non-exempt positions and subject to Defendant's unlawful pay practices and policies described herein and who worked for Defendant at any point in the three years preceding the date the instant action was initiated (the members of this putative class are referred to as "Plaintiffs").

6. Named Plaintiff and Plaintiffs are similarly situated, have substantially similar non-managerial job duties, have substantially similar pay provisions, and are all subject to Defendant's unlawful policies and practices as described herein.

7. There are numerous similarly situated current and former employees of Defendant who were compensated improperly for earned wages and overtime earned wages, in violation of the FLSA, and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join in the present lawsuit.

8. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant's records.

9. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of himself and those employees similarly situated, pursuant to the "opt-in" provision of the FLSA, 29 U.S.C. § 216(b).

FACTUAL ALLEGATIONS

10. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

11. Named Plaintiff is a former hourly employee of and began employment for Defendant on or about April 1, 2013; his employment ended on or about October 1, 2015.

12. Plaintiffs are current and/or former hourly employees of Defendant, who, within the last three years, have been or are presently employed by Defendant.

13. Upon information and belief, Defendant is a restaurant engaged in the production of food and other goods for interstate commerce. Specifically, Defendant makes a substantial use of the channels of interstate commerce by preparing and serving food for vacationers to the Myrtle Beach, SC area. Additionally, Defendant has annual gross sales or business of at least \$500,000.

14. Named Plaintiff was a "tip" employee, and Plaintiffs were and/or are "tip" employees for Defendant.

15. During all times relevant herein and upon information and belief, Defendant has maintained an unlawful wage payment system for at least the last three years and has enforced such unlawful policies at the facility named in this lawsuit.

16. For example, Defendant maintains a policy that no tip employee can clock in until their first table is sat. Likewise, all tip employees must clock out as soon as their last table is finished. However, tip employees are required to continue working for Defendant during the time they are off

the clock. The total time worked off the clock for each tip employee exceeds two to three hours per day.

17. The policy described in the previous paragraph was enforced with an iron fist. If the Named Plaintiff or Plaintiffs expressed a desire to remain on the clock, or if they remained on the clock, they were threatened with losing their job. Likewise, if they showed signs they would report the incident, they were threatened with losing their job.

18. Named Plaintiff and Plaintiffs routinely worked overtime; during the busy season, usually between March and October, Named Plaintiff and Plaintiffs worked at least fifteen hours a "work week". However, because Defendant required Named Plaintiff and Plaintiffs to perform most of the work while off the clock, overtime compensation was not paid.

FOR A FIRST CAUSE OF ACTION

(Fair Labor Standards Act – Failure to Pay Minimum Wage)

19. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

20. At all times relevant herein, Defendant has been and continues to be an "employer", within the meaning of the FLSA.

21. At all times relevant herein, Named Plaintiff and Plaintiffs were and are "employees", of Defendant within the meaning of the FLSA.

22. At all times relevant herein, Defendant was and is responsible for paying wages to Named Plaintiff and Plaintiffs.

23. At all times relevant herein, Defendant has annual gross sales or business of at least \$500,000 and has two or more employees engaged in interstate commerce or the production of goods for interstate commerce, within the meaning of the FLSA.

24. The minimum wage provisions of the FLSA, 29 U.S.C. § 201 *et. seq.*, apply to Defendants and protect Named Plaintiff and Plaintiffs.

25. Named Plaintiff and Plaintiffs were and are entitled to be compensated by Defendant at the rate of \$7.25 per hour, pursuant to 29 U.S.C. § 206.

26. Defendant failed to pay Named Plaintiff and Plaintiffs any wages whatsoever for certain hours worked, in violation of 29 U.S.C. § 206.

27. Defendant failed to pay Named Plaintiff and Plaintiffs a minimum wage for certain hours worked because Defendant required Named Plaintiff and Plaintiffs to be off the clock while working certain hours.

28. Defendant was and is aware that the FLSA applies to their business, willfully disregarded the requirements of the FLSA, and willfully required Named Plaintiff and Plaintiffs to clock out while working, for the purposes of not paying Named Plaintiff and Plaintiffs minimum wage for time worked.

29. As a result of Defendant's unlawful conduct, Named Plaintiff and Plaintiffs have suffered damages set forth herein.

FOR A SECOND CAUSE OF ACTION

(Fair Labor Standards Act – Failure to Pay Overtime Compensation)

30. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

31. At all times relevant herein, Defendant has been and continues to be an "employer", within the meaning of the FLSA.

32. At all times relevant herein, Named Plaintiff and Plaintiffs were and are "employees", of Defendant within the meaning of the FLSA.

33. At all times relevant herein, Defendant was and is responsible for paying wages to Named Plaintiff and Plaintiffs.

34. At all times relevant herein, Defendant has annual gross sales or business of at least \$500,000 and has two or more employees engaged in interstate commerce or the production of goods for interstate commerce, within the meaning of the FLSA.

35. The wage provisions of the FLSA, 29 U.S.C. § 201 *et. seq.*, apply to Defendants and protect Named Plaintiff and Plaintiffs.

36. Named Plaintiff and Plaintiffs were and are entitled to be compensated by Defendant for their employment in excess of forty hours a work week, at a rate not less than one and one-half times the regular rate at which Named Plaintiff and Plaintiffs were and are employed, pursuant to 29 U.S.C. § 207.

37. Defendant failed to pay Named Plaintiff and Plaintiffs any wages whatsoever for certain hours worked, in violation of 29 U.S.C. § 207.

38. Defendant failed to pay Named Plaintiff and Plaintiffs any overtime wage for certain hours worked because Defendant required Named Plaintiff and Plaintiffs to be off the clock while working certain hours.

39. Defendant was and is aware that the FLSA applies to their business, willfully disregarded the requirements of the FLSA, and willfully required Named Plaintiff and Plaintiffs to clock out while working, for the purposes of not paying Named Plaintiff and Plaintiffs an overtime wage for overtime worked.

40. As a result of Defendant's unlawful conduct, Named Plaintiff and Plaintiffs have suffered damages set forth herein.

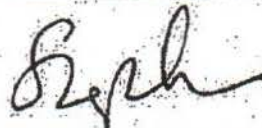
JURY TRIAL DEMAND

41. Named Plaintiff and Plaintiffs demand that all issues in this case triable before a jury are so tried.

WHEREFORE, Named Plaintiff and Plaintiffs pray that this Court will enter Judgment providing, to the fullest extent possible, every remedy available under 29 U.S.C. § 216, including, but not limited to, the amount of Named Plaintiff's and Plaintiffs' unpaid minimum wages and unpaid overtime compensation, an additional equal amount as liquidated damages, pre and post-judgment interest, a reasonable attorney's fee and the cost of this action, and all other applicable penalties and other relief as the Court deems just and proper.

Respectfully Submitted,

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Myrtle Beach, South Carolina
March 24, 2016

NRAI Packing Slip



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FedEx Tracking # : 782848765403
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KRISTEN FANCHER	
Title :	--
Customer :	MARGARITAVILLE
Address :	3379 PEACHTREE RD NE STE 900
Email :	KFANCHER@MARGARITAVILLE.COM
Phone :	404-262-0929
Fax :	-

Package Type : Envelope
Items shipped : 1

Log #	Case #	Entity Name
529005071	2016CP262311	MARGARITAVILLE OF MYRTLE BEACH, LLC