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FACTS

Plaintiff Lysa Escalante brings this suit against Defendants Gatsby Entertainment and Rob Mersis, who owns and operates Gatsby’s, a restaurant and bar in Denver, Colorado. Plaintiff alleges, as an individual and on behalf of other similarly situated persons, that: (1) Defendants Gatsby Entertainment and Rob Mersis violated the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 (2006) et seq.; the Colorado Wage Claim Act, C.R.S. § 8-4-101; and the Colorado Minimum Wage Act, C.R.S. § 8-3-101; by diverting employee tips and failing to pay overtime and the minimum wage; (2) Plaintiff worked at Gatsby’s as a bartender and server from May 30, 2013, to August 20, 2013; (3) Defendants instituted a tip-pooling arrangement that violated state and federal law in that Gatsby’s required all employees who received tips directly from customers to combine their tips into a pool, which Gatsby’s distributed among those tipped employees, as well as management, kitchen staff, and other employees who are not customarily and regularly tipped; (4) in doing so, Defendants instituted an invalid tip pool under the FLSA.

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MOTION TO DISMISS

Fed. R. Civ. P. 12(b)(1) provides a defendant may move to dismiss a claim for lack of jurisdiction. A Rule 12(b)(1) motion to dismiss may take the form of a facial attack on the allegations, or, as here, it may challenge the facts on which subject matter jurisdiction is alleged. In federal subject matter jurisdiction and a violation of the FLSA, Plaintiff must establish and prove the elements of an "enterprise" for the purposes of the Act. 29 U.S.C. § 207. The jurisdictional claim and the merits of this case are intertwined. Because Gatsbys minimum wage sexual harassment claims in the 2013 calendar year, this Court’s decision on

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