

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

CASE NO.:

LORILYNN RICE, KRISTEN
GURDAK, GABRIEL AGUILAR,
BRITTANY SOTO, and LAUREN
TAYLOR, on their own behalves
and others similarly situated,

Plaintiffs,

v.

LUCKY BRAND DUNGAREES
STORES, INC., a Foreign Profit
Corporation

Defendant.

_____ /

COMPLAINT

Plaintiffs, LORILYNN RICE, KRISTEN GURDAK, GABRIEL AGUILAR, BRITTANY SOTO, and LAUREN TAYLOR (collectively “Plaintiffs”), on behalf of themselves and other employees and former employees similarly situated, by and through undersigned counsel, files this Complaint against Defendant, LUCKY BRAND DUNGAREES STORES, INC. (“LUCKY BRAND”) (“Defendant”) and states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid overtime wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorneys’ fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

PARTIES

3. At all times material hereto, Plaintiffs were, and continues to be residents of Broward County, Florida.

4. At all times material hereto LUCKY BRAND was a foreign profit corporation. Further, at all times material hereto, LUCKY BRAND was engaged in business in Florida, with a principal place of business in Florida.

5. LUCKY BRAND is vintage-inspired denim company with its brand located in over 177 stores in the United States. As a result of the products and services provided by LUCKY BRAND, two or more of its employees regularly handled and worked with goods and materials moved in or produced in commerce.

6. At all times material hereto, Plaintiffs were “engaged in commerce” within the meaning of §6 and §7 of the FLSA. Specifically, Plaintiffs regularly utilized and handled goods manufactured and purchased from outside the State of Florida.

7. At all times material hereto, Plaintiffs were “employees” of Defendant within the meaning of the FLSA.

8. At all times material hereto, Defendant was Plaintiffs’ “employer” within the meaning of the FLSA.

9. At all times material hereto, Defendant was, and continues to be an “enterprise engaged in commerce” within the meaning of the FLSA. Specifically, Defendant purchased equipment and denim products manufactured outside the State of Florida.

10. At all times material hereto, Defendant was and continues to be, an enterprise engaged in the “production of goods for commerce” within the meaning of the FLSA.

11. Based upon information and belief, the annual gross revenue of Defendant was in excess of \$500,000.00 per annum during the relevant time periods.

12. The additional persons who may become plaintiffs in this action are/were store employees of Defendant who worked at the same location as Plaintiffs, who held similar positions to Plaintiffs, and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one-half times their regular rate for their hours worked in excess of forty (40).

13. At all times material hereto, the work performed by Plaintiffs was essential to the business performed by Defendant.

STATEMENT OF FACTS

14. At various times between 2009 and 2011, Plaintiffs were employed with Defendant as store employees at Defendant’s retail store located in Sawgrass Mills Mall, located at 12801 West Sunrise Boulevard, Sunrise Florida, 33323.

15. At various material times within the last 2 years, Plaintiffs worked for Defendant in excess of forty (40) hours within a work week.

16. During their employment, Plaintiffs and all other similarly situated employees, reported to Alvaro Quintero who was the store manager. During their employment, Mr. Quintero regularly reduced and deleted hours worked from Plaintiffs’ and similarly situated employees timecards prior to submitting same for payroll processing services.

17. During their employment Defendant failed to compensate Plaintiffs and all similarly situated employees at the rate of one-half times Plaintiffs’ regular rate of pay for all

hours worked in excess of forty (40) within a single work week. Plaintiffs should be compensated at the rate of one-half times Plaintiffs' regular rate for those hours that Plaintiffs worked in excess of forty (40) per week, as required by the FLSA.

18. Defendant has violated Title 29 U.S.C. §207 from at least 2009 through 2011, and continuing to date, in that:

- a. Plaintiffs worked in excess of forty (40) hours per week for the period in which they were employed with Defendant;
- b. No payments, and provisions for payment, have been made by Defendant to properly compensate Plaintiffs at the statutory rate of one-half times Plaintiffs' regular rate for those hours worked in excess of forty (40) per work week as provided by the FLSA; and
- c. Defendant has failed to maintain proper time records as mandated by the FLSA.

19. Plaintiffs have retained THE LAW OFFICES OF ROBERT RUBENSTEIN, P.A to represent Plaintiffs in the litigation and have agreed to pay the firm a reasonable fee for its services.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

20. Plaintiffs reallege and reaver paragraphs 1 through 19 of the Complaint as if fully set forth herein.

21. From at least 2009 through 2011, Plaintiffs worked in excess of the forty (40) hours per week for which Plaintiffs were not compensated at the statutory rate of one-half times Plaintiffs' regular rate of pay.

22. Plaintiffs were, and are entitled to be paid at the statutory rate of one-half times Plaintiffs' regular rate of pay for those hours worked in excess of forty (40).

23. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.

24. Defendant's actions were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiffs at the statutory rate of one-half times Plaintiffs' regular rate of pay for the hours worked in excess of forty (40) per week, plus liquidated damages.

25. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

26. At all times material hereto, Defendant failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiffs by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees for fewer hours than they actually worked.

27. Based upon information and belief, the employees and former employees of Defendant similarly situated to Plaintiffs were not paid for all hours worked, and to the extent such hours, if properly credited to Plaintiffs, would have credited Plaintiffs with more than forty (40) hours or more hours in a work week, Defendant has failed to properly pay Plaintiffs, and those similarly situated to them, proper overtime wages for such hours.

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

- a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiffs overtime compensation in the amount due to them for Plaintiffs' time worked in excess of forty (40) hours per work week;
- c. Awarding Plaintiffs liquidated damages in an amount equal to the overtime award;
- d. Awarding Plaintiffs reasonable attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- e. Awarding Plaintiffs pre-judgment interest; and
- f. Ordering any other further relief the Court deems just and proper.

COUNT II
DECLARATORY RELIEF

28. Plaintiffs adopt all allegations in paragraph 1 through 27.
29. Plaintiffs and Defendant have an FLSA dispute pending, which the Court has jurisdiction to hear pursuant to 28 U.S.C. §1331, as a federal question exists.
30. The Court also has jurisdiction to hear Plaintiffs' request for declaratory relief pursuant to the Declaratory Judgment Act. 28 U.S.C. §§2201-2202.
31. Plaintiffs may obtain declaratory relief.
32. Defendant employed Plaintiffs.
33. Defendant is an enterprise.
34. Defendant failed to pay Plaintiffs for all hours worked.
35. Plaintiffs are entitled to overtime pursuant to 29 U.S.C. §207(a)(1).

36. Defendant did not keep accurate time records pursuant to 29 U.S.C. §211(c) and 29 C.F.R. Part 516.

37. Defendant did not rely upon a good faith defense.

38. Plaintiffs are entitled to an equal amount of liquidated damages.

39. It is in the public interest to have these declarations of rights recorded.

40. Plaintiffs' declaratory judgment action serves the useful purpose of clarifying and settling the legal relations in issue.

41. The declaratory judgment action terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

42. Plaintiffs demand a trial by jury.

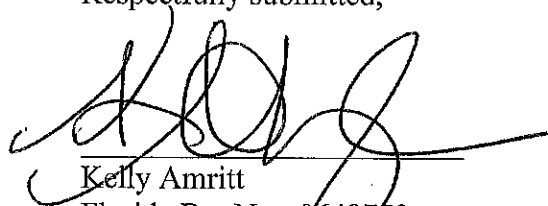
WHEREFORE, Plaintiffs demand a declaration of rights finding that an employer-employee relationship existed, Plaintiffs worked over forty hours in a work week without receiving correct overtime compensation pursuant to the FLSA, Defendant failed to keep accurate time records, Defendant has a legal duty to pay Plaintiffs overtime compensation pursuant to the FLSA, Defendant failed to prove a good faith defense, Plaintiffs are entitled to overtime compensation, liquidated damages and reasonable attorneys' fees and costs pursuant to the FLSA.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable as a matter of right by jury.

DATED this 30th day of August 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Amritt', written over a horizontal line.

Kelly Amritt

Florida Bar No.: 0648779

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