

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

| | |
|--------------------------|---|
| LUISA AMELIA SILVA RIOS, |) |
| an individual |) |
| |) |
| <i>Plaintiff,</i> |) |
| |) |
| vs. |) |
| |) |
| CAVALIER HOTEL, SOUTH |) |
| BEACH, L.L.C., a Florida |) |
| Corporation |) |
| <i>Defendant.</i> |) |
| _____ |) |

COMPLAINT FOR DAMAGES

Plaintiff, LUISA AMELIA SILVA RIOS, (hereinafter “Plaintiff) sues Defendant, CAVALIER HOTEL, SOUTH BEACH, LLC., (hereinafter “Defendant”), and states:

INTRODUCTION

This is an action to recover unpaid overtime wage compensation under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et. seq.* (hereinafter “FLSA”).

JURISDICTION

1. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §1331. At all times pertinent to this Complaint, the corporate Defendant was an enterprise engaged in interstate commerce. At all times pertinent to this Complaint, Defendant regularly owned and operated a business engaged in commerce or in the production of goods for commerce as defined in §3(r) and 3(s) of the FLSA, 29 U.S.C. §203 (r) and 203 (s).

2. The Defendant is subject to the jurisdiction of the United States District Court because they engage in substantial and not isolated activity within this judicial district.
3. The Defendant is also subjects to the jurisdiction of the United States District Court because they operate, conduct, engage in, and/or carry on business in the Southern District of Florida.

VENUE

4. The venue of this Court over this controversy is based upon the following:
 - a. The unlawful employment practices alleged below occurred and/or were committed in Miami-Dade County, Florida, in the Southern District of Florida.
 - b. Defendant was and continues to be a Florida corporation and an individual doing business within this judicial district.

PARTIES

5. At all times material hereto, Plaintiff, LUISA AMELIA SILVA RIOS, was and continues to be a resident of Miami-Dade County, Florida, and was an “employee” of the Defendant within the meaning of the FLSA.
6. At all times material hereto, Defendant was the employer of Plaintiff, RIOS.
7. At all times material hereto, Defendant, was and continues to be “employer[s] within the meaning of the FLSA.
8. At all times material hereto, Defendant knowingly and willfully failed to pay RIOS her lawfully earned wages in conformance with 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.

10. At all times material hereto, the work performed by Plaintiff, RIOS, was directly essential to the business performed by the Defendant.
11. At all times material hereto, Defendant, was a supervisor/owner of the Defendant corporation, who supervised the work of the Plaintiff, and was involved in the day-to-day operations of the Defendant Corporation.
12. At all times material hereto, Defendant was directly involved in decisions affecting employee compensation and/or hours worked by Plaintiff.
13. Plaintiff has fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

STATEMENT OF FACTS

14. On or about February 2006, Plaintiff began working for the Defendant in housekeeping at the Defendant's business.
15. Plaintiff's employment was terminated on or about October 31, 2010.
16. Throughout Plaintiff's employment, she often worked over forty (40) hours per week.
17. Defendant knowingly and willfully operated its business with a policy of not paying the overtime rate of time and one-half for hours worked in excess
18. Plaintiff has retained DORTA & ORTEGA, P.A., to represent her in this litigation and has agreed to pay the firm a reasonable fee for their services.

STATEMENT OF CLAIM

COUNT 1

VIOLATION OF 29 U.S.C. § 207 (UNPAID OVERTIME)

19. Plaintiff realleges Paragraphs 1 through 18 as if fully stated herein.
20. Since Plaintiff's date of hire with Defendant, in addition to Plaintiff's normal regular work week, Plaintiff worked additional hours in excess of forty (40) hours per week for which she was not compensated at the statutory rate of time and one-half.
21. Plaintiff was entitled to be paid at the rate of time and one-half for her hours worked in excess of the maximum hours provided for in the FLSA.
22. Defendant failed to pay Plaintiff overtime compensation in the lawful amount for hours worked by Plaintiff in excess of the maximum hours provided by the FLSA.
23. Plaintiff was entitled to be paid at the rate of time and one-half for all her hours worked in excess of the maximum hours provided for in the FLSA.
24. Records, if any, concerning the number of hours worked by Plaintiff and the actual compensation paid to Plaintiff are in the possession and custody of the Defendant. Plaintiff intends to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, she will then seek leave of Court to amend her Complaint for Damages to set forth the precise amount due.
25. Defendant knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiff at the statutory rate of

time and one-half for the hours worked in excess of forty (40) hours per week when it knew or should have known such was due.

26. Defendant failed to properly disclose or apprise Plaintiff of her rights under the FLSA.

27. As a direct and proximate result of Defendant's willful disregard of the FLSA, Plaintiff is entitled to liquidated damages pursuant to the FLSA.

28. Due to the intentional, willful and unlawful acts of Defendant, Plaintiff has suffered damages in the amount not presently ascertainable of unpaid overtime wages, plus an equal amount as liquidated damages.

29. Plaintiff is entitled to an award of her reasonable attorney's fees and costs pursuant to 29 U.S.C. § 216(b).

COUNT II

UNPAID OVERTIME WAGES AGAINST CAVALIER HOTEL, SOUTH BEACH, LLC.

30. Plaintiff realleges Paragraphs 19 through 29 as if fully stated herein

31. As plead in the Complaint and the wherefore clause, the Plaintiff demands payment for unpaid overtime wages, and additional equal amount of unpaid overtime wages as liquidated damages, interest, and costs and attorney's fees.

32. Defendant, CAVALIER HOTEL, SOUTH BEACH, LLC. agreed to pay RIOS \$8.00 an hour for a forty hour work week. Instead, CAVALIER paid RIOS an hourly rate of \$8.00 and hour regardless of how many hours in excess of forty hours she worked.

33. Plaintiff worked an average of 25 hours of overtime a week; 50 biweekly hours of over time.

34. Defendant failed to compensate for overtime wages at RIOS' corresponding overtime rate of \$12.00 for hours that she worked in excess of 40 hours per week.

35. According to the Plaintiff's current information, the Plaintiff calculates that she is owed in excess of approximately \$10,400.00 in overtime wages for the period of time from October 2008 through October 31, 2010.

36. The above calculation: Total of 25 weekly overtime hours at \$4.00 per hour for 104 weeks.

37. To date, Plaintiff's counsel has expended a total of 5 hours at \$395.00 an hour for a total of \$1,975.00.

38. Records, if any, concerning the number of hours worked by Plaintiff and the actual compensation paid to Plaintiff are in the possession and custody of the Defendant. Plaintiff, RIOS, intends to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, she will then seek leave of Court to amend her Complaint for Damages to set forth the precise amount due.

39. Defendant knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiff, RIOS, at the statutory rate of time and one-half for the hours worked in excess of forty (40) hours per week when it knew or should have known such was due.

40. Defendant failed to properly disclose or apprise Plaintiff, RIOS, of her rights under the FLSA.

41. As a direct and proximate result of Defendant willful disregard of the FLSA, Plaintiff, RIOS, is entitled to liquidated damages pursuant to the FLSA.

42. Due to the intentional, willful and unlawful acts of the Defendant, Plaintiff, RIOS, has suffered damages in the amount not presently ascertainable of unpaid overtime wages plus an equal amount as liquidated damages.

43. Plaintiff is entitled to an award of her reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, the Plaintiff, respectfully requests that judgment be entered in her favor against the Defendant:

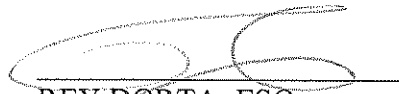
- a. Declaring the Defendant has violated the maximum hour provisions of 29 U.S.C. § 207;
- b. Award Plaintiff overtime compensation for in the amount calculated;
- c. Award Plaintiff liquidated damages in the amount calculated;
- d. Award Plaintiff reasonable attorneys' fees and costs and expenses of this litigation pursuant to 29 U.S.C. § 216(b);
- e. Awarding Plaintiff post-judgment interest; and
- f. Ordering any other further relief this Court deems to be just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable as of right by jury.

Dated: May 18, 2011.

DORTA & ORTEGA, P.A.


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