

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

GERALD KELLY, and DILLION
WEERAMAN on their own behalves and
others similarly situated,

Plaintiffs,

Case No:

v.

PHILIPPE MIAMI, LLC, a Florida Limited
Liability Corp.

Defendant.

COMPLAINT

Plaintiffs, GERALD KELLY (“KELLY”) and DILLION WEERAMAN (“WEERAMAN”)(collectively “Plaintiffs”), on behalf of themselves and other employees and former employees similarly situated, by and through undersigned counsel, file this Complaint against Defendant, PHILIPPE MIAMI, LLC., (“PHILIPPE” or “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 attorney’s 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 continue to be residents of Miami-Dade County, Florida.

4. At all times material hereto PHILIPPE MIAMI, LLC was a Florida Limited Liability Company. Further, at all times material hereto, PHILIPPE MIAMI, LLC was engaged in business in Florida, with a principle place of business in Florida.

5. At all times material hereto, Plaintiffs were “engaged in commerce” within the meaning of §6 and §7 of the FLSA.

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

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

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

9. 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.

10. 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.

11. At all times hereto, Plaintiffs were “engaged in commerce” and subject to individual coverage of the FLSA.

12. At all times hereto, Plaintiffs were engaged in the “production of goods for commerce” and subject to the individual coverage of the FLSA.

13. The additional persons who may become plaintiffs in this action are hourly

paid restaurant employees of Defendant, 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 and one-half times their regular rate for their hours worked in excess of forty (40) hours.

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

STATEMENT OF FACTS

15. Defendant hired Plaintiffs to work as hourly paid restaurant employees.

16. At various material times hereto, Plaintiffs worked for Defendant in excess of forty (40) hours within a work week.

17. Defendant failed to compensate Plaintiffs at rate of one and one-half times Plaintiffs' regular rate for all hours worked in excess of forty (40) hours in a single work week. Plaintiffs should be compensated at the rate of one and one-half times Plaintiffs' regular rate for those hours that Plaintiff worked in excess of forty (40) hours per week as required by the FLSA

18. Defendant has violated Title 29 U.S.C. §207, in that:

- a. Plaintiffs have worked in excess of forty (40) hours per week for the period of employment with Defendant;
- b. No payments, and provisions for payment, have been made by Defendant to properly compensate Plaintiffs at the statutory rate of one and one-half times Plaintiffs' regular rate for those hours worked in excess of forty (40) hours 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 firm of MORGAN & MORGAN, P.A. to

represent Plaintiffs in the litigation and has 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 20 of the Complaint as if fully set forth herein.

21. During their employment, Plaintiffs worked in excess of the forty (40) hours per week for which Plaintiffs were not compensated at the statutory rate of one and one-half times Plaintiffs' regular rate of pay.

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

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 and one-half times Plaintiffs' regular rate of pay for the hours worked in excess of forty (40) hours per weeks when it knew, or should have known, such was, and is due.

25. Defendant has failed to properly disclose or apprise Plaintiffs of Plaintiffs' rights under the FLSA.

26. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiffs suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

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

28. 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.

29. 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) or more hours in a work week, Defendant has failed to properly pay Plaintiff, and those similarly situated to him, proper overtime wages at time and a half their regular rate of pay 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 attorney's 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
RETALIATION (as to Plaintiff WEERAMAN only)

30. Plaintiff re-incorporates and re-adopts all allegations contained within Paragraphs 1-29 above.

31. On or about February 27, 2009, Defendant fired Plaintiff due to his repeated requests regarding overtime pay and his participation in this lawsuit. Defendant has discriminated against Plaintiff because he was inquiring about Defendant's failure to pay proper overtime wages.

32. Defendant's discharge of Plaintiff is discrimination and retaliation against Plaintiff in violation of 29 U.S.C. §215(a)(3).

33. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has been damaged.

WHEREFORE, Plaintiff demands judgment against Defendant, including, but not limited to, reimbursement of an amount equal to the loss of wages and other benefits suffered by reason of Defendant's unlawful conduct, including interest on such back wages, together with costs and attorney's fees pursuant to the FLSA, compensatory and emotional distress damages, and such other further relief as this Court deems just and proper, including any and all injunctive relief this Court deems just and proper.

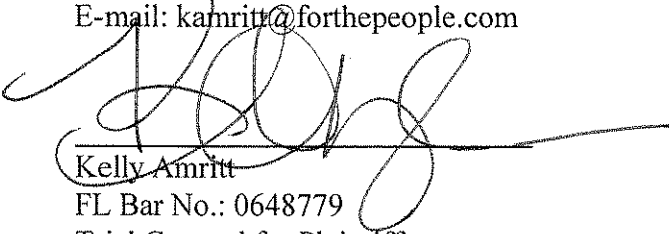
JURY DEMAND

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

DATED this 21st day of October, 2009.

Respectfully submitted,

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