

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 10-CV-61069 MARTIN/BROWN

ORLANDO LAWRENCE and
JOAN CIMO, on behalf of themselves
and all other similarly situated,,

Plaintiff,

v.

THE BERKLEY GROUP, INC.
TOWER RESORTS REALTY, INC.
ALWAYS TRAVEL WITH US, INC.
and BRUCE POLANSKY, individually,

Defendant.

FIRST AMENDED COMPLAINT

NOW COME the Plaintiffs, ORLANDO LAWRENCE and JOAN CIMO, by and through the undersigned attorney and bring this action under the Fair Labor Standards Act of 1938, as amended (29 USC § 201 et seq.), hereinafter “the Act”, to recover unpaid back wages, unpaid overtime compensation, future lost wages, an additional equal amount as liquidated damages, reasonable attorney’s fees and costs.

1. Jurisdiction of this action is conferred by Section 16(b) of the Act (29 USC §216(b)).

COUNT I
(ORLANDO LAWRENCE and JOAN CIMO v. THE BERKLEY GROUP, INC.)

2. Defendant, THE BERKLEY GROUP, INC. (hereinafter BERKLEY), at all times hereinafter mentioned has been a Florida corporation having a place of business and doing business at 3015 North Ocean Blvd., Suite 121, Fort Lauderdale, FL where it has been engaged in vacation

and timeshare business.

3. At all times hereinafter mentioned, Defendant, BERKLEY having been engaged in related activities performed through unified operation or common control for a common business purpose; having employees engaged in commerce or in the production of goods for commerce, or employees handling, receiving, selling or otherwise working on goods or materials that have been moved in or produced for commerce; and having annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), therefore constitutes an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(r) and (s) of the Act (29 USC §203(r) and (s)).

4. At all times hereinafter mentioned, Defendant BERKLEY employed employees, including Plaintiffs who were regularly engaged in handling, receiving, selling or otherwise working with machinery, materials and goods moved in or produced for commerce and other activities involving interstate commerce. Such employees, therefore, have been engaged in commerce within the meaning of Section 3(b) and (j); respectively, of the Act (29 USC § 203 (b) and (j)).

5. During the period from April 2007 to April 2010, Defendant BERKLEY, employed Plaintiff ORLANDO LAWRENCE in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-half($\frac{1}{2}$) and/or one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

6. During the period from September, 2009 to January, 2010, Defendant BERKLEY employed Plaintiff JOAN CIMO, in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-half($\frac{1}{2}$) and/or one and one-half ($1\frac{1}{2}$) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

7. As a result of the underpayment of wages alleged above, Defendant BERKLEY is indebted to Plaintiff ORLANDO LAWRENCE in the amount of unpaid minimum wages and overtime compensation and back pay. The complete records concerning the number of hours worked by Plaintiff ORLANDO LAWRENCE, and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant BERKLEY.

8. As a result of the underpayment of wages alleged above, Plaintiff ORLANDO LAWRENCE estimates that Defendant BERKLEY is indebted to Plaintiff in the amount of \$30,194.39, which amount Defendant BERKLEY refused to pay. This is only a portion of the wages owed to Plaintiff, ORLANDO LAWRENCE. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

9. Pursuant to Section 16(b) of the Act, Plaintiff ORLANDO LAWRENCE is entitled to the recovery of a reasonable attorney's fee.

10. As a result of the underpayment of wages alleged above, Defendant BERKLEY is indebted to Plaintiff JOAN CIMO in the amount of unpaid minimum wages and overtime

compensation and back pay. The complete records concerning the number of hours worked by Plaintiff JOAN CIMO and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant BERKLEY.

11. As a result of the underpayment of wages alleged above, Plaintiff JOAN CIMO estimates that Defendant BERKLEY is indebted to Plaintiff in the amount of \$4,699.05, which amount Defendant BERKLEY refused to pay. This is only a portion of the wages owed to Plaintiff, JOAN CIMO. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

12. Pursuant to Section 16(b) of the Act, Plaintiff JOAN CIMO is entitled to the recovery of a reasonable attorney's fee.

WHEREFORE, Plaintiff ORLANDO LAWRENCE demands judgment against Defendant BERKLEY for \$30,194.39, Plaintiff JOAN CIMO demands judgment against Defendant BERKLEY for \$4,699.05, an additional equal amount as liquidated damages, reasonable attorney's fees and costs and a trial by jury on all issues.

COUNT II

(ORLANDO LAWRENCE and JOAN CIMO v. TOWER RESORTS REALTY, INC.)

13. Defendant, TOWER RESORTS REALTY, INC.. (hereinafter TOWER), at all times hereinafter mentioned has been a Florida corporation having a place of business and doing business at 3015 North Ocean Blvd., Suite 121, Fort Lauderdale, FL where it has been engaged in vacation and timeshare business.

14. At all times hereinafter mentioned, Defendant, TOWER having been engaged in

related activities performed through unified operation or common control for a common business purpose; having employees engaged in commerce or in the production of goods for commerce, or employees handling, receiving, selling or otherwise working on goods or materials that have been moved in or produced for commerce; and having annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), therefore constitutes an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(r) and (s) of the Act (29 USC §203(r) and (s)).

15. At all times hereinafter mentioned, Defendant TOWER employed employees, including Plaintiffs who were regularly engaged in handling, receiving, selling or otherwise working with machinery, materials and goods moved in or produced for commerce and other activities involving interstate commerce. Such employees, therefore, have been engaged in commerce within the meaning of Section 3(b) and (j); respectively, of the Act (29 USC § 203 (b) and (j)).

16. During the period from April 2007 to April 2010, Defendant TOWER, employed Plaintiff ORLANDO LAWRENCE in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-half($\frac{1}{2}$) and/or one and one-half($1\frac{1}{2}$) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

17. During the period from September, 2009 to January, 2010, Defendant TOWER employed Plaintiff JOAN CIMO, in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-

half(1/2) and/or one and one-half (1 1/2) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

18. As a result of the underpayment of wages alleged above, Defendant TOWER is indebted to Plaintiff ORLANDO LAWRENCE in the amount of unpaid minimum wages and overtime compensation and back pay. The complete records concerning the number of hours worked by Plaintiff ORLANDO LAWRENCE, and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant TOWER.

19. As a result of the underpayment of wages alleged above, Plaintiff ORLANDO LAWRENCE estimates that Defendant TOWER is indebted to Plaintiff in the amount of \$30,194.39, which amount Defendant TOWER refused to pay. This is only a portion of the wages owed to Plaintiff, ORLANDO LAWRENCE. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

20. Pursuant to Section 16(b) of the Act, Plaintiff ORLANDO LAWRENCE is entitled to the recovery of a reasonable attorney's fee.

21. As a result of the underpayment of wages alleged above, Defendant TOWER is indebted to Plaintiff JOAN CIMO in the amount of unpaid minimum wages and overtime compensation and back pay. The complete records concerning the number of hours worked by Plaintiff JOAN CIMO and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant

TOWER.

22. As a result of the underpayment of wages alleged above, Plaintiff JOAN CIMO estimates that Defendant TOWER is indebted to Plaintiff in the amount of \$4,699.05, which amount Defendant TOWER refused to pay. This is only a portion of the wages owed to Plaintiff, JOAN CIMO. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

23. Pursuant to Section 16(b) of the Act, Plaintiff JOAN CIMO is entitled to the recovery of a reasonable attorney's fee.

WHEREFORE, Plaintiff ORLANDO LAWRENCE demands judgment against Defendant TOWER for \$30,194.39, Plaintiff JOAN CIMO demands judgment against Defendant TOWER for \$4,699.05, an additional equal amount as liquidated damages, reasonable attorney's fees and costs and a trial by jury on all issues.

COUNT III
(ORLANDO LAWRENCE and JOAN CIMO v. ALWAYS TRAVEL WITH US, INC.)

24. Defendant, ALWAYS TRAVEL WITH US, INC.. (hereinafter ALWAYS), at all times hereinafter mentioned has been a Florida corporation having a place of business and doing business at 3015 North Ocean Blvd., Suite 121, Fort Lauderdale, FL where it has been engaged in vacation and timeshare business.

25. At all times hereinafter mentioned, Defendant, ALWAYS having been engaged in related activities performed through unified operation or common control for a common business purpose; having employees engaged in commerce or in the production of goods for commerce, or employees handling, receiving, selling or otherwise working on goods or materials that have been moved in or produced for commerce; and having annual gross volume of sales made or business

done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated), therefore constitutes an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(r) and (s) of the Act (29 USC §203(r) and (s)).

26. At all times hereinafter mentioned, Defendant ALWAYS employed employees, including Plaintiffs who were regularly engaged in handling, receiving, selling or otherwise working with machinery, materials and goods moved in or produced for commerce and other activities involving interstate commerce. Such employees, therefore, have been engaged in commerce within the meaning of Section 3(b) and (j); respectively, of the Act (29 USC § 203 (b) and (j)).

27. During the period from April 2007 to April 2010, Defendant ALWAYS, employed Plaintiff ORLANDO LAWRENCE in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-half($\frac{1}{2}$) and/or one and one-half ($1 \frac{1}{2}$) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

28. During the period from September, 2009 to January, 2010, Defendant ALWAYS employed Plaintiff JOAN CIMO, in the aforesaid enterprise for workweeks longer than 40 hours and failed to compensate him for his employment in excess of 40 hours per week at a rate of at least one-half($\frac{1}{2}$) and/or one and one-half ($1 \frac{1}{2}$) times the regular rate at which he was employed, contrary to the requirements of Section 7 of the Act (29 USC § 207), and failed to pay him the applicable minimum hourly rate contrary to the requirements of Sections 6 and 15 (a)(2) of the Act (29 USC §206 and 15 (a)(2)).

29. As a result of the underpayment of wages alleged above, Defendant ALWAYS is indebted to Plaintiff ORLANDO LAWRENCE in the amount of unpaid minimum wages and overtime compensation and back pay. The complete records concerning the number of hours worked by Plaintiff ORLANDO LAWRENCE, and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant ALWAYS.

30. As a result of the underpayment of wages alleged above, Plaintiff ORLANDO LAWRENCE estimates that Defendant ALWAYS is indebted to Plaintiff in the amount of \$30,194.39, which amount Defendant ALWAYS refused to pay. This is only a portion of the wages owed to Plaintiff, ORLANDO LAWRENCE. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

31. Pursuant to Section 16(b) of the Act, Plaintiff ORLANDO LAWRENCE is entitled to the recovery of a reasonable attorney's fee.

32. As a result of the underpayment of wages alleged above, Defendant ALWAYS is indebted to Plaintiff JOAN CIMO in the amount of unpaid minimum wages and overtime compensation and back pay. The complete records concerning the number of hours worked by Plaintiff JOAN CIMO and the compensation he received in workweeks in which excess hours were worked, are in exclusive possession and under the sole custody and control of the Defendant ALWAYS.

33. As a result of the underpayment of wages alleged above, Plaintiff JOAN CIMO estimates that Defendant ALWAYS is indebted to Plaintiff in the amount of \$4,699.05, which amount Defendant ALWAYS refused to pay. This is only a portion of the wages owed to Plaintiff,

JOAN CIMO. Upon receipt of discovery from Defendant, Plaintiff will calculate the total damages due.

34. Pursuant to Section 16(b) of the Act, Plaintiff JOAN CIMO is entitled to the recovery of a reasonable attorney's fee.

WHEREFORE, Plaintiff ORLANDO LAWRENCE demands judgment against Defendant ALWAYS for \$30,194.39, Plaintiff JOAN CIMO demands judgment against Defendant ALWAYS for \$4,699.05, an additional equal amount as liquidated damages, reasonable attorney's fees and costs and a trial by jury on all issues.

COUNT IV
(ORLANDO LAWRENCE and JOAN CIMO v. BRUCE POLANSKY)

Plaintiffs repeat the allegations of paragraphs 1 through 34.

35. Defendant BRUCE POLANSKY, is an officer of the corporations, actively participated in the business and exercised control over the functions of the employees. For example Defendant BRUCE POLANSKY ran meetings where he would speak to approximately 100 sales people and explain what to do in terms of selling and what script to follow during the time period the sales people were on the boat going to the Bahamas. Mr. Polansky was the individual that the Plaintiff ORLANDO LAWRENCE had to go to and request a transfer. Mr. Polansky denied Plaintiff ORLANDO LAWRENCE's request to transfer to Voyages. After the sales people, including Plaintiffs, stop selling timeshares on the boat, POLANSKY sat with the sales people individually to decide who would go to which land based timeshare location and who was going to be laid off. Defendant POLANSKY also had a meeting where he informed the Plaintiffs that they would receive twelve percent (12%) commission while on the boat as opposed to the seven percent

(7%) commission while selling at the land based timeshares. Defendant POLANSKY sent memos on a weekly or monthly basis concerning how many days to work, and what the sales people could and could not do. Additionally, POLANSKY stated that if the sales people missed a certain amount of days, they would be suspended. He also denied a bonus of approximately \$3,600.00 which was due to Plaintiff LAWRENCE.

36. As a result of the under payment of wages alleged above, Plaintiff ORLANDO LAWRENCE calculates the Defendant BRUCE POLANSKY is indebted to Plaintiff in the total amount of \$30,194.39, which amount Defendant, BRUCE POLANSKY has refused to pay.

37. Pursuant to Section 16(b) of the Act, Plaintiff ORLANDO LAWRENCE is entitled to the recovery of a reasonable attorney's fee.

38. As a result of the under payment of wages alleged above, Plaintiff JOAN CIMO calculates the Defendant BRUCE POLANSKY is indebted to Plaintiff in the total amount of \$4,699.05, which amount Defendant, BRUCE POLANSKY has refused to pay.

39. Pursuant to Section 16(b) of the Act, Plaintiff JOAN CIMO is entitled to the recovery of a reasonable attorney's fee.

WHEREFORE, Plaintiff ORLANDO LAWRENCE demands judgment against Defendant BRUCE POLANSKY for \$30,194.39, Plaintiff JOAN CIMO demands judgment against Defendant BRUCE POLANSKY for \$4,699.05, an additional equal amount as liquidated damages, reasonable attorney's fees and costs and a trial by jury on all issues.

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Certificate of Service

It is hereby certified that on the 23rd day of August, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specific, either via transmission of Notice of Electronic filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic filing.

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RESORTS REALTY, INC., ALWAYS TRAVEL WITH US, INC., and BRUCE POLANSKY

CASE NO.: 10-CV-61069 MARTIN/BROWN

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