

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

DOUGLAS J. ALVARADO,
and other similarly situated non-exempt
employees,

Plaintiff,

vs.

BOCAS HOUSE CORAL GABLES, LLC, a
Florida Limited Liability Company and MAURICIO
MONTOVANI, individually,

Defendants.

**NOTICE OF REMOVAL OF ABOVE-ENTITLED CAUSE TO THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FROM THE
ELEVENTH JUDICIAL CIRCUIT COURT OF MIAMI-DADE COUNTY,
IN THE STATE OF FLORIDA**

Defendants, Bocas House Coral Gables, LLC (“Bocas House”) and Mauricio Montovani
 (“Montovani”) state:

1. A civil action has been commenced and is now pending in the Eleventh Judicial Circuit Court of Miami Dade County, in the state of Florida, in which Douglas J. Alvarado is plaintiff and Bocas House and Montovani are defendants.

2. This is a civil action of which the United States district courts have original jurisdiction in that the action is one to recover damages pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. § 201, et. seq., the Fair Labor Standards Act, hereinafter the “FLSA”)

3. Defendants seek removal of this action to this court upon the ground and for the reason that this action is founded on a claim or right arising under the laws of the United States, in that it is based upon the section 29 U.S.C. § 201, et. seq. for the reason that Plaintiff is seeking damages

pursuant to the FLSA for alleged Wage and Hour minimum wage violations and for retaliatory discharge.

4. This Notice is filed in this court within thirty (30) days after the receipt by defendants of a copy of the pleading setting forth the claimed relief upon which the action is based, and, therefore the time for filing this Notice under the provisions of 28 U.S.C.A. § 1446(b) has not expired.

5. A true and correct copy of this Notice will be filed with the Clerk of the Florida Court as provided by law.

6. Written notice of the filing of this Notice will be given to all adverse parties as required by law.

7. There is attached a true and correct copy of the pleadings received by Defendants in this action.

WHEREFORE, Defendants, Bocas House Coral Gables, LLC and Mauricio Montovani pray that action may be removed from said state court into this court for trial and determination.

Dated May 30, 2018.

Respectfully Submitted,

DE VARONA LAW
Attorneys for Defendants
350 Camino Gardens Blvd., Suite 107
Boca Raton, Florida 33432
Tel: (561) 600-9070
Fax: (561) 600-9077

By: /s/ Alexandra Sierra-De Varona
ALEXANDRA SIERRA-DE VARONA
Fla. Bar No. 195928
asd@devaronalaw.com

CERTIFICATE OF SERVICE

I HEREBY certify that on this 30th of May, 2018 the foregoing document is being served on Jason S. Remer, Esq. jremer@rgpattorneys.com, Brody M. Shulman, Esq. bshulman@rgpattorneys.com, and Miriam Colmenarez, Esq., mcolmenarez@rgpattorneys.com by electronic mail.

DE VARONA LAW
Attorneys for Defendants
350 Camino Gardens Blvd., Suite 107
Boca Raton, Florida 33432
Tel: (561) 600-9070
Fax: (561) 600-9077

By: /s/ Alexandra Sierra-De Varona
ALEXANDRA SIERRA-DE VARONA
Fla. Bar No. 195928
asd@devaronalaw.com

**IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA.**

Case No.: 2018 CA 011322

**DOUGLAS J. ALVARADO,
and other similarly situated
non-exempt employees,**

Plaintiff,

vs.

**BOCAS HOUSE CORAL GABLES, LLC
Florida Limited Liability Company and
MAURICIO MANTOVANI, Individually.**

Defendants.

FIRST AMENDED COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(B))

COMES NOW, the Plaintiff, DOUGLAS J. ALVARADO (“Plaintiff”), on behalf of himself and other employees and former employees similarly situated, by and through undersigned counsel, hereby respectfully files a Complaint against Defendants BOCAS HOUSE CORAL GABLES, LLC Florida Limited Liability Company and MAURICIO MANTOVANI, Individually (Collectively “Defendants”) and states as follows:

JURISDICTION AND VENUE

1. This is an action by the Plaintiff, and other similarly-situated individuals, for damages pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., (hereinafter the “FLSA”), Article X, Section 24 of the Florida Constitution, and the Florida Minimum Wage Act (the “FMWA”) to recover unpaid minimum wages and tips, an additional equal

amount as liquidated damages, and reasonable attorneys' fees and costs. This is also an action for retaliatory discharge.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).
3. Plaintiff was at all times relevant to this action, and continues to be, a resident of Miami Dade County Florida, within the jurisdiction of this Honorable Court. Further, Plaintiff is a covered employee for purposes of the FLSA.
4. Defendant, BOCAS HOUSE CORAL GABLES, LLC., has its main place of business in Miami Dade County, Florida, where Plaintiff worked for Defendant and at all times material hereto was, and is, engaged in interstate commerce.
5. Defendant, MAURICIO MANTOVANI, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, BOCAS HOUSE CORAL GABLES, LLC.
6. Defendant is accordingly an "employer" as defined by the FLSA.
7. Venue is proper in Miami-Dade County because all of the actions that form the basis of this Complaint occurred within Miami-Dade County, payment was due in Miami Dade County, and damages are due and owing in Miami-Dade County.
8. All conditions precedent for the filing of this action before this Court has been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Plaintiff was employed with Defendants from approximately August 2017 to on or about April 2, 2018, as a non-exempt server.

10. Plaintiff and Defendants were engaged in an implied agreement whereby Plaintiff would be employed by Defendants and that Plaintiff would be properly paid as provided for by, and not in violation of, the laws of the United States and the State of Florida.
11. During the relevant time period of, August 2017 to on or about April 2, 2018, Plaintiff performed approximately thirty-two (32) hours per week; which were compensated at approximately five dollars and fifty cents (\$5.50) plus tips.
12. During the very beginning of Plaintiff's employment, as instructed, there was a tip pool, in which about thirty (30%) percent of his tips were shared with supporting staff, which included the desert workers in the back/kitchen.
13. During the length of his employment, about thirty-five (35%) percent was taken from his credit card tips and allocated amongst the employees of the restaurant; within the thirty (35%) percent that was deducted, approximately seven (7%) was allocated to the desert workers in the back/kitchen; another seven (7%) was allocated to the managers; thus, Plaintiff is owed proper minimum wages and his tips so illegally shared.
14. In addition, during Plaintiff's employment, Plaintiff worked approximately three (3) hours off the clock weekly; polishing glassware, folding napkins and fixing utensils and was not properly compensated for those hours.
15. Therefore, on or about March 16, 2018, Plaintiff through the undersigned Attorney mailed a Certified Demand Letter to Defendants requesting Plaintiff's dues. (Exhibit A).
16. Subsequently, Plaintiff's work hours were extremely reduced from about thirty-two (32) hours per week to about twenty (20) hours per week.
17. Then, Plaintiff was suspended without pay for two days for merely pretext reasons.

18. Thereafter, on or about April 2, 2018, Plaintiff was terminated by the General Manager Pedro Oscarasis in retaliation of his complaints of unpaid wages.

COUNT I

***Wage & Hour Federal Statutory Violation Against
BOCAS HOUSE CORAL GABLES, LLC***

19. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 18, of this Complaint as if set out in full herein.
20. This action is brought by Plaintiff and other similarly-situated individuals to recover from Defendant unpaid minimum wage compensation, tips, as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 *et seq.*, and specifically under the provisions of 29 U.S.C. § 207.
21. Jurisdiction is conferred on this Court by Title 29 U.S.C. § 216(b).
22. At all times pertinent to this Complaint, Defendant operated as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and the Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.
23. Upon information and belief, the annual gross revenue of the Defendant was at all times material hereto in excess of \$500,000 per annum, and, by virtue of working in interstate commerce, otherwise satisfies the FLSA's coverage requirements.
24. By reason of the foregoing, the Defendant is and was, during all times hereafter mentioned, an enterprise 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). Defendant's business activities involve those to which the Fair Labor Standards Act applies. The Plaintiff's work for the Defendant likewise affects interstate commerce.

25. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire.
26. At all times material hereto, the Defendant failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 *et seq.* in that Defendant utilized a tip pool where about thirty-five (35%) of the credit card tips were pooled and shared with managers and desert workers in the back or the kitchen.
27. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of minimum wages and proper sharing of tips as required by the Fair Labor Standards Act and remain owing Plaintiff these unpaid wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.
28. Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to minimum wage payments and proper tip pool use.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid minimum wage;
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and

E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT II
Wage & Hour Federal Statutory Violation Against
MAURICIO MANTOVANI

29. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 18, of this Complaint as if set out in full herein.
30. At the times mentioned, Defendant **MANTOVANI** was, and is now, a corporate officer of corporate Defendant **BOCAS HOUSE CORAL GABLES, LLC**.
31. Defendant **MANTOVANI** was an employer of Plaintiff within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)], in that Defendant **MANTOVANI** acted directly in the interests of the corporate Defendant-employer in relation to the employees of the corporate Defendant-employer, including Plaintiff.
32. The FLSA defines the term “employer” broadly to include “both the employer for whom the employee directly works as well as ‘any person acting directly or indirectly in the interests of an employer in relation to an employee.’”¹
33. Based on this broad definition, Defendant **MANTOVANI**, in his status as a corporate officer with operational control of a Defendant-corporation's covered enterprise is an employer along with the Defendant-corporation, jointly and severally liable under the FLSA for unpaid wages.”²
34. Defendant **MANTOVANI** willfully and intentionally refused to properly pay Plaintiff wages as required by the law of the United States as set forth above and remains owing Plaintiff these wages.

¹ *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1298 (11th Cir. 2011)

² *Patel v. Wargo*, 803 F.2d 632, 637-38 (11th Cir.1986)

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant **MANTOVANI**:

- A. Adjudge and decree that Defendant **MANTOVANI** has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Adjudge and decree that Defendant **MANTOVANI** is an individual with operational control and is, thus, jointly and severally liable under the FLSA for unpaid wages at issue;
- C. Award Plaintiff actual damages in the amount shown to be due for unpaid wages, with interest; and
- D. Award Plaintiff an equal amount in double damages/liquidated damages; and
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees;
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances; and
- G. Grant Plaintiff a Trial by Jury.

COUNT III
RETALIATORY DISCHARGE AGAINST
BOCAS HOUSE CORAL GABLES, LLC

- 35. Plaintiff realleges and re-avers paragraph 1 through 18, of the Complaint as if fully set forth herein.
- 36. Defendant's conduct as set forth above constitutes a violation of the FLSA's anti-retaliation provision.
- 37. The motivating factor that caused Plaintiff's adverse employment action as described above was Plaintiff's complaint regarding not being properly paid for all hours worked.

38. The Defendant's conduct was in direct violation of the FLSA, and, as a direct result, Plaintiff have been damaged.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendants:

- A. Adjudge and decree that Defendant has violated the FLSA and have done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter judgment against the Defendant for all back wages from the date of discharge to the present date and an equal amount of back wages as liquidated damages, and;
- C. Enter judgment against the Defendant for all front wages until Plaintiff becomes 65 years of age; and
- D. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT IV
RETALIATORY DISCHARGE AGAINST
MAURICIO MANTOVANI

39. Plaintiff realleges and re-avers paragraph 1 through 18 of the Complaint as if fully set forth herein.

40. Defendant's conduct as set forth above constitutes a violation of the FLSA's anti-retaliation provision.

41. The motivating factor that caused Plaintiff's adverse employment action as described above was Plaintiff's complaint regarding not being properly paid for all hours worked.

42. The Defendant's conduct was in direct violation of the FLSA, and, as a direct result, Plaintiff have been damaged.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendants:

- A. Adjudge and decree that Defendant has violated the FLSA and have done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter judgment against the Defendant for all back wages from the date of discharge to the present date and an equal amount of back wages as liquidated damages, and;
- C. Enter judgment against the Defendant for all front wages until Plaintiff becomes 65 years of age; and
- D. Enter an award against Defendant and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT V
FMWA Violation Against
BOCAS HOUSE CORAL GABLES, LLC

43. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 18 of this complaint as if set out in full herein.

44. This action is brought by Plaintiff and other similarly-situated individuals to recover from the Defendants unpaid minimum wage compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of the

FMWA, Fla. Stat. §§448 *et seq.*, and specifically under the provisions of Fla. Stat. § 448.110.

45. Defendants' business activities involve those to which the Florida Minimum Wage Law applies.

46. Plaintiff seeks to recover for unpaid minimum wages accumulated from the date of hire. Florida's hourly minimum wage in 2018 was \$8.25; 2017 was \$8.10.

47. Defendants knew and/or showed reckless disregard of the provisions of the FMWA concerning the payment of minimum wages as required by the FMWA and remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendants as set forth above. As such, Plaintiff is entitled to recover double damages.

WHEREFORE, Plaintiff respectfully pray for the following relief against Defendants:

- A. Adjudge and decree that Defendants have violated the FMWA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid wages, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff the costs of this action, together with reasonable attorneys' fees; and
- E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

JURY DEMAND

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

Date: 4/20/18

Respectfully submitted,

REMER & GEORGES-PIERRE, PLLC

44 West Flagler Street, Suite 2200

Miami, FL 33130

Telephone: (305)416-5000

Facsimile: (305)416-5005

By: **/s/ Miriam Colmenarez**

Jason S. Remer, Esq.

Fla. Bar No.: 0165580

Brody M. Shulman, Esq.

Fla. Bar No.: 092044

Miriam Colmenarez, Esq.

Fla. Bar No.: 0118144

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Douglas J. Alvarado and other sililary situated non-exempt employees DEFENDANTS Bocas House Coral Gables, LLC and Mauricio Mantovani

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Miriam Colmeanarez Remer & Georges-Pierre, PLLC 44 West Flagler Street, Suite 2000 Attorneys (If Known) Alexandra Sierra- De Varona De Varona Law 350 Camino Gardens Blvd Suite 107

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Form with checkboxes for jurisdiction and citizenship. Includes options like 'U.S. Government Plaintiff', 'Federal Question', 'Diversity', 'Citizen of This State', etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large grid of checkboxes for nature of suit categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. 201, et. seq. LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE May 30, 2018 SIGNATURE OF ATTORNEY OF RECORD

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bocas House Coral Gables Pegged with Wage and Hour Lawsuit](#)