

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
CASE NO.

CARMELA BALTAZAR, individually, and
as the class representative of others
similarly situated,

Plaintiff,

vs.

8:17 cv 304 T 23 TBM

2017 FEB - 8 AM 9:51

JANKI HOSPITALITY INC.,
a domestic corporation, and

MUKUND D. PATEL,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, CARMELA BALTAZAR, individually, and as class representative of others similarly situated (herein after referred to as "Baltazar"), by and through her undersigned counsel, sues JANKI HOSPITALITY INC., a Florida corporation, and MUKUND D. PATEL, individually (collectively referred to as "Defendants") for violations of the overtime provisions of the Fair Labor Standards Act ("FLSA") 29 USC § 207 and states as follows:

PRELIMINARY STATEMENT

1. The Plaintiff brings this action for violations of the FLSA §207 for failure to pay overtime compensation.
2. Defendants unlawfully misclassified Plaintiff Baltazar as an exempt employee to avoid compensating her for time worked in excess of forty (40) hours per week.

TBA-41664
\$400

3. Defendants failed to pay Plaintiff in accordance with the FLSA. Specifically, Plaintiff was not paid time and a half of his regular rate of pay for all hours worked in excess of forty (40) hours per week.

4. In this pleading, "Defendants", means the named Defendants, JANKI HOSPITALITY INC., a domestic corporation, and MUKUND D. PATEL, a individually, and other corporation, organization or entity responsible for the employment practices complained of herein (discovery may reveal additional Defendants that should be included).

5. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proof, or persuasion. Plaintiff reserves all rights to plead in the alternative.

PARTIES, JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 USC §§ 1331 and 1337 and 29 USC § 216(b) because this action involves a federal question under the Fair Labor Standards Act.

7. The Court has supplemental jurisdiction with respect to claims arising under state law pursuant to 28 USC § 1367.

8. Venue is proper in the District Court because Defendants operate substantial business in Pinellas County, Florida. Furthermore, the damages complained of occurred in Pinellas County at the Defendants' place of business is located in Clearwater, Florida.

9. Plaintiff is a resident of Pinellas County, Florida, and was employed by Defendants as a housekeeper/ maid from approximately March of 2014 until present.

10. At all times relevant to this action, Plaintiff has been an employee within the meaning of 29 USC § 203(e)(I).

11. Defendant, MUKUND D. PATEL is a Florida resident and/or individual who conducts business in the State of Florida. He is the sole officer of JANKI HOSPITALITY, INC. He created and directed the pay practices and controlled and directed the work of Plaintiff. MUKUND D. PATEL is also an officer and manager of Defendant, JANKI HOSPITALITY, INC., thus making him an employer within the meaning of the FLSA. See In Re: Van Diepen, P.A., 236 F. App'x 498, 12 Wage & Hour Cas. 2d (BNA) 1358 (11th Cir. 2007) (allowing individual liability).

12. The FLSA defines "employer" as any "person" acting directly or indirectly in the interests of an employer in relation to an employee. 29 USC § 203(d). See also Boucher v. Shaw, 572 Fed. 3d 1087, 1090 (9th Cir. 2009) (the definition of "employer" under the Fair Labor Standards Act (FLSA) is not limited by the common law concept of "employer", but is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes).

13. Defendant, of JANKI HOSPITALITY, INC., is a Florida Corporation with its principal address at 11333 US Hwy. 19 N., Clearwater, FL 33764 and may be served through its registered agent for service of process, MUKUND D. PATEL, at his stated address at 11333 US Hwy. 19 N., Clearwater, FL 33764

14. At all times material hereto, JANKI HOSPITALITY, INC. was an "enterprise engaged in commerce" within the meaning of the FLSA.

15. At all times material hereto, JANKI HOSPITALITY, INC. was the "employer" of Plaintiff within the meaning of the FLSA, 29 USC § 203.

16. This action is brought under the FLSA to recover from Defendants unpaid overtime wages, monies due and owing, liquidated damages, and reasonable attorneys' fees and costs.

17. All conditions precedent to the filing of this action have been performed.

GENERAL ALLEGATIONS

18. Plaintiff Baltazar was employed by Defendants as a housekeeper/maid from approximately March 2014 until present.

19. Plaintiff's job duties as a housekeeper/maid included cleaning rooms, laundry service, light maintenance, and all other activities so directed by JANKI HOSPITALITY, INC. and its officers and agents.

20. Plaintiff was provided with a list of rooms to clean and tasks to perform by JANKI HOSPITALITY, INC.

21. At all times relevant, Plaintiff was supervised by JANKI HOSPITALITY, INC., officers, and agents and did not have the right to independent operations or decision making.

22. Plaintiff worked in excess of 40 hours per week but did not receive overtime compensation.

23. Defendants further agreed to increase pay for Plaintiff, although failed to honor their obligation to pay her consistently with the agreement.

24. Defendants' failure to properly pay Plaintiff was a willful violation of the FLSA.

25. Defendants have no good faith basis for failing to pay Plaintiff appropriately nor for failing to pay the appropriate overtime.

26. Defendants, as business owners, are fully aware of the minimum hourly pay, overtime, and classification of individuals performing work for the Defendants.

27. Plaintiff does not have the authority to hire, fire, or discipline other employees.

28. Plaintiff is a non-exempt employee whose duties dictate the same; her job duties do not involve the use of discretion in the performance of her job.

29. Plaintiff's position is subject to the FLSA wage provisions.

30. Plaintiff often worked more than 8 hour days for 6 days a week. Plaintiff worked overtime hours consistently throughout her employment and was not properly compensated.

31. Defendants compensated Baltazar at a rate of \$8.50 per hour.

32. Plaintiff was provided a mixed compensation plan by Defendants to avoid compensating her for overtime hours worked in excess of forty (40) hours per work week.

33. Plaintiff complained to Defendants regarding their unlawful pay practices.

34. After being advised by Plaintiff of the unlawful pay practices, Defendants advised that they would alter their practice and comply with FLSA, but failed to do so repeatedly.

35. Plaintiff continues to work for Defendant under compensation terms prohibited by the FLSA.

COUNT 1
VIOLATION OF OVERTIME PROVISIONS OF THE FLSA (§ 207)

36. Plaintiff re-adopts and re-alleges the allegations set forth in Paragraph 1 through 35 as if fully set forth herein.

37. Plaintiff was an employee of Defendant within the meaning of 29 USC § 203(e)(1).

38. Defendants are an employer within the meaning of 29 USC § 203(d).

39. The overtime wage provisions set forth in FLSA § 207 apply to Defendants, which engaged in commerce under the definition of the FLSA.

40. During the relevant time period, Plaintiff was not paid overtime compensation for all hours worked in excess of forty (40) per week.

41. During the relevant time period, Defendants required Plaintiff, a non-exempt employee under the FLSA, to regularly work in excess of forty (40) hours per week without payment of overtime.

42. Defendants are, or should have been, aware of FLSA's overtime calculations, its provisions and exemptions, and know, or should have known, that withholding wages from Plaintiff constituted a willful violation of the FLSA.

43. Therefore, Defendants willfully and intentionally engaged in a pattern and practice of violating the overtime provisions of the FLSA by refusing to pay overtime to Plaintiff for all hours worked in excess of forty (40) hours per week.

44. Defendants cannot show in good faith reliance upon any factor or law for misclassifying Plaintiff as an independent contractor.

45. Evidence reflecting the precise number of overtime hours worked by Plaintiff is in the possession of Defendants. If these records are unavailable, Plaintiff may establish the hours he worked solely by his testimony and the burden of overcoming such testimony shifts to the employer. See Anderson v. Mount Clemens Pottery Company. 328 US 680 (1946).

46. Plaintiff is entitled to time and one-half of her regular hourly rate for each hour worked in excess of forty (40) hours per work week.

47. As a direct result of Defendants' violation of the FLSA, Plaintiff suffered damages by being denied overtime wages in accordance with Section 207 and Section 216(b) of the FLSA, in addition with the damages associated with the loss of his Social Security and employer contributions to Social Security benefits.

48. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff.

WHEREFORE, Plaintiff, CARMELA BALTAZAR, individually, and as class representative of others similarly situated, requests this Honorable Court to:

- A. Order Defendants to pay an award of damages to fully compensate Baltazar for overtime wages and other compensation to which he is entitled;
 - B. Order Defendants to pay liquidated damages;
 - C. Order Defendants to pay pre-judgment interest on all sums due Plaintiff;
 - D. Order Defendants to pay compensatory damages allowable at law;
 - E. Order Defendants to pay an award of attorney's fees pursuant to 29 USC § 216(b)
- and; grant such further relief as the court deems just, necessary, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint and on all issues so triable.

WHEREFORE, the Plaintiff, CARMELA BALTAZAR, individually and as the class representative of others similarly situated, demands judgment for damages, including punitive damages, against the Defendants, JANKI HOSPITALITY, INC. and MUKUND D. PATEL, together with such other and further relief as this Honorable Court deems necessary and appropriate.

Dated this 3 of February, 2017.

TRAGOS, SARTES & TRAGOS, PLLC

/s/ Peter L. Tragos, _____
Peter L. Tragos, Esq.
601 Cleveland Street, Suite 800
Clearwater, Florida 33755
Phone: (727) 441-9030
Facsimile: (727) 441-9254
Florida Bar No: 0106744
petertragos@greeklaw.com
linda@greeklaw.com

JS 44 (Rev. 11-15)

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.)

<p>I. (a) PLAINTIFFS CARMELA BALTAZAR, individually and as the class representative of others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Pinellas</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Peter L. Tragos, Esq., Tragos, Sartes & Tragos, PLLC 601 Cleveland Street, Suite 800 Clearwater, FL 33755</p>	<p>DEFENDANTS JANKI HOSPITALITY, INC., a domestic corporation, and MUKUND D. PATEL</p> <p>County of Residence of First Listed Defendant <u>Pinellas</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p> <p>Attorneys (If Known) Unknown</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excludes Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care: Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<p>LABOR</p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor-Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Remanded or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

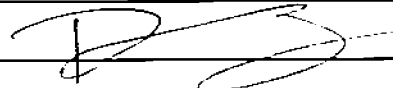
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
29 USC § 207

Brief description of cause of action:
wage and overtime

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE: _____ DOCKET NUMBER: _____

DATE: 02/03/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IEP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Filed Against Janki Hospitality Over Employee Misclassification](#)
