

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____-CIV-_____/_____

DAMIAN BESIL, on behalf of himself
and others similarly situated,

Plaintiff,

v.

CAFE PAPILLON INC., a Florida Corporation, and
JOSE REVILLA-ALBO, individually,

Defendants.

COMPLAINT

1. Plaintiff, DAMIAN BESIL (hereinafter referred to as “Plaintiff”), is an individual residing in Miami-Dade County, Florida.

2. Defendants, CAFE PAPILLON INC. (hereinafter referred to “CAFE PAPILLON INC.”), a Florida Limited Liability Company, through JOSE REVILLA-ALBO, have owned and operated a restaurant doing business as CAFE PAPILLION located at 276 N.E. 3rd Street, Miami, Florida 33132 in Miami-Dade County, within the jurisdiction of this Court.

3. Defendant, JOSE REVILLA-ALBO, has at all times material to this Complaint owned, managed, and/or operated CAFE PAPILLON INC. and Defendant REVILLA-ALBO regularly exercised the authority to hire and fire employees including Plaintiff, determined the manner in which employees were compensated, determined how employees’ hours worked were tracked or recorded, set the rates of pay employees, and/or controlled the finances and day-to-day management operations of CAFE PAPILLON INC. By virtue of such control and authority, Defendant REVILLA-ALBO is an employer of Plaintiff and the other similarly situated non-

exempt security employees within the meaning of the Fair Labor Standards Act, 29 U.S.C. §203(d).

4. Plaintiff brings this action on behalf of himself¹ and other current and former employees of CAFE PAPILLON INC. and JOSE REVILLA-ALBO (collectively referred to as “Defendants”) similarly situated to Plaintiff for overtime wages and other relief under the Fair Labor Standards Act (“FLSA”), as amended, 29 U.S.C. §216(b).

5. More specifically, this action is brought to recover from Defendants unpaid overtime wages, liquidated damages, and the costs and reasonable attorneys’ fees of this action under the provisions of the FLSA, 29 U.S.C. §216(b), for Plaintiff and the other similarly situated employees of Defendants, as well as for alleged Retaliation against Plaintiff in violation of the FLSA, 29 U.S.C. §215.

6. Jurisdiction is conferred on this Court by 28 U.S.C. §216(b) and 29 U.S.C. §1337.

7. All of the events, or a substantial part of the events, giving rise to this action, occurred within the jurisdiction of the United States District Court for the Southern District of Florida, Miami Division.

8. In or around approximately March 2017, Defendants hired Plaintiff as a cook on an hourly basis at the rate of \$15.00 per hour.

9. Between approximately March 2017 and early October 2017, Plaintiff worked for Defendants as a non-exempt, hourly cook and Plaintiff’s primary duties consisted of: (a) prepping food and cooking meals; (b) washing dishes, cleaning the kitchen, and taking out the trash; and (c) inventory.

10. At all times material to this Complaint including but not necessarily limited to

¹ Attached hereto is a signed Consent to Join from Plaintiff BESIL.

during the years 2014, 2015, 2016, and 2017, CAFE PAPILLON INC. has had two (2) or more employees who have regularly sold, handled, or otherwise worked on goods and/or materials that have been moved in or produced for commerce. In this regard, Plaintiff alleges based upon information and belief and subject to discovery, that at all times material to this Complaint, CAFE PAPILLON INC. has employed two (2) or more employees who, *inter alia*: (a) regularly handled and worked on kitchen and commercial equipment—including but not limited to an oven, grills, electrical kettles, refrigerators, a cooler, slicer, and blenders—that were goods and/or materials moved in or produced for commerce; (b) regularly handled and worked with food and beverages—including but not limited to Italian prosciutto, manchego cheese, tropical vegetables, meats, Corona, Heneikan, Modela, Estrella, imported Turkish and Colombian coffee—that were goods and/or materials moved in or produced for commerce; and (c) regularly processed electronic bank and credit card transactions for payments by and for Defendants' customers through banks and merchant services for credit card companies such as Visa, Mastercard, and American Express.

11. Based upon information and belief, the annual gross sales volume of CAFE PAPILLON INC. has been in excess of \$500,000.00 per annum at all times material to this Complaint, including but not necessarily limited to during the years 2014, 2015, 2016, and 2017.

12. At all times material to this Complaint including but not necessarily limited to during the years 2014, 2015, 2016, and 2017, CAFE PAPILLON INC. has been an enterprise engaged in interstate commerce or in the production of goods for commerce as defined by the FLSA, 29 U.S.C. §203(s).

13. In numerous work weeks during the three (3) year statute of limitations period between approximately March 2017 and mid-August 2017, Plaintiff regularly worked four (4) to six (6) days per week for Defendants—typically five (5) days per week on Wednesday, Thursday,

Friday, Saturday, and Sunday—with start times as early as approximately 7:00 a.m. on weekdays and 7:30 a.m. on weekends and with stop times between approximately 3:00 p.m. and 7:00 p.m., regularly working an average of approximately Fifty (50) hours per week.

14. However, Plaintiff alleges that Defendants failed to pay time and one-half wages for all of the hours he worked in excess of Forty (40) hours per week for Defendants between approximately March 2017 and mid-August 2017, as Defendants instead paid only straight-time wages at the rate of \$15.00 per hours for all of Plaintiff's hours worked each week with part of the wages paid via check and part paid in cash.

15. Based upon Plaintiff being owed an average of Ten (10) overtime hours per week from Defendants during a total of approximately Twenty-Two (22) work weeks between approximately March 2017 and mid-August 2017 at the half-time rate of \$7.50 per hour [from straight-time wages paid of $\$15.00/2 = \7.50 per hour], Plaintiff's unpaid overtime wages total \$1,650.00 [10 OT hours/week x \$7.50/hour x 22 weeks = \$1,650.00].

16. Likewise, based upon information and belief, Defendants have also failed to pay time and one-half wages for all of the hours worked by other non-exempt hourly cooks and other restaurant employees in one or more weeks within the three (3) year statute of limitations period between November 2014 and the present.

17. The additional persons who may become Plaintiffs in this action are Defendants' current and former cooks and other non-exempt restaurant employees, however variously titled, who have worked for Defendants in one or more weeks between November 2014 and the present without being paid time and one-half wages for all of their hours worked in excess of Forty (40) hours per week within the three (3) year statute of limitations period.

18. Based upon information and belief, records reflecting and/or relating to at least

some of the start times, stop times, number of hours worked each day, and total number of hours worked each week by Plaintiff and the other similarly situated employees for Defendants between November 2014 and the present are the in the possession, custody, and/or control of Defendants.

19. Despite Defendants having knowledge of the overtime hours worked each week by Plaintiff and the other similarly situated employees for the benefit of Defendants between November 2014 and the present, Defendants nonetheless willfully failed to time and one-half wages for all overtime hours worked as required by the FLSA.

20. Based upon information and belief, the complete records of the actual wages—including all cash wages actually paid by Defendants to Plaintiff and the other similarly situated employees between November 2014 and the present—are in the possession, custody, and/or control of Defendants.

21. Beginning in or around early August 2017 and on multiple occasions through early October 2017, Plaintiff started complaining to Defendants' Manager, Osain Guerra, and Defendant REVILLA-ALBO about Defendants' illegal practices of paying straight-time wages for all hours worked—including hours worked in excess of Forty (40) hours per week—and paying part of all wages in cash.

22. In retaliation for Plaintiff's complaints about Defendants' illegal compensation practices, Defendants began reducing Plaintiff's work hours in approximately mid-August 2017 to less than Forty (40) hours per week and ultimately around Thirty (30) hours per week in September 2017 before ultimately terminating Plaintiff's employment on or around October 9, 2017.

23. The reasons proffered by Defendants for Plaintiff's termination in October 2017 were false and known to be false by Defendants at the time of Plaintiff's termination.

COUNT I
OVERTIME VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

Plaintiff, DAMIAN BESIL, readopts and realleges the allegations contained in Paragraphs 1 through 23 above.

24. Plaintiff is entitled to be paid time and one-half of his applicable regular rate of pay for each hour he worked for Defendants in excess of Forty (40) hours per work week during the three (3) year statute of limitations period between approximately March 2017 and mid-August 2017.

25. All similarly situated non-exempt cooks and other restaurant employees, however variously titled, of Defendants are also entitled to be paid time and one-half wages for all of their hours worked in excess of Forty (40) hours per week for Defendants within the three (3) year statute of limitations period between November 2014 and the present.

26. Defendants have knowingly and willfully failed to pay Plaintiff and the other employees similarly situated to him at time and one-half of their applicable regular rates of pay for all hours worked for Defendants in excess of Forty (40) per week between November 2014 and the present.

27. At all times material to this Complaint, Defendants had constructive and actual notice that Defendants' compensation practices did not provide Plaintiff and the other similarly situated non-exempt servers, however variously titled, with time and one-half wages for all of their actual overtime hours worked between November 2014 and the present based upon, *inter alia*: Defendants knowingly failing to pay time and one-half wages for all of the actual hours worked in excess of Forty (40) hours per week by Plaintiff and other similarly situated non-exempt employees, however variously titled.

28. By reason of the said intentional, willful and unlawful acts of Defendants, all

Plaintiffs (the named Plaintiff and those similarly situated to him) have suffered damages plus incurring costs and reasonable attorneys' fees.

29. Defendants did not have a good faith basis for their failure to pay the overtime wages required by law for all of the actual hours worked by Plaintiff and Defendants' other non-exempt servers in excess of Forty (40) hours per week in numerous work weeks between November 2014 and the present, as a result of which Plaintiff and the other similarly situated employees are entitled to the recovery of liquidated damages in an amount equal to their unpaid overtime wages from Defendants pursuant to 29 U.S.C. §216(b).

30. Plaintiff has retained the undersigned counsel to represent him in this action, and pursuant to 29 U.S.C. §216(b), Plaintiff is entitled to recover from Defendants all reasonable attorneys' fees and costs incurred as a result of Defendants' violations of the FLSA.

WHEREFORE, Plaintiff, DAMIAN BESIL, and any current or former employees similarly situated to her who join this action as Opt-In Plaintiffs, demand judgment, jointly and severally, against Defendants, CAFE PAPILLON INC. and JOSE REVILLA-ALBO, for the payment of all unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of suit, and for all proper relief including prejudgment interest.

COUNT II
RETALIATION IN VIOLATION OF THE FAIR LABOR STANDARDS ACT

Plaintiff, DAMIAN BESIL, readopts and realleges the allegations contained in Paragraphs 1 through 23 above.

31. Beginning in or around early August 2017 and on multiple occasions through early October 2017, Plaintiff started complaining to Defendants' Manager, Osain Guerra, and Defendant REVILLA-ALBO about Defendants' illegal practices of paying straight-time wages for all hours worked—including hours worked in excess of Forty (40) hours per week—and paying part of all

wages in cash.

32. In retaliation for Plaintiff's complaints about Defendants' illegal compensation practices, Defendants began reducing Plaintiff's work hours in approximately mid-August 2017 to less than Forty (40) hours per week and ultimately around Thirty (30) hours per week in September 2017 before ultimately terminating Plaintiff's employment on or around October 9, 2017.

33. The reasons proffered by Defendants in October 2017 for Plaintiff's termination were false and known to be false by Defendants at the time of Plaintiff's termination.

34. When Plaintiff made complaints to Defendants between approximately August 2017 and September 2017 about not being paid time and one-half wages for his hours worked in excess of Forty (40) hours per week, Plaintiff engaged in activity protected by the Fair Labor Standards Act, 29 U.S.C. §215.

35. Defendants and management employees of CAFE PAPILLON INC. undertook retaliatory actions against Plaintiff, including ultimately terminating Plaintiff's employment on or around October 9, 2017, and a motivating factor behind Defendants' retaliation was Plaintiff's pursuit of the unpaid overtime wages he believed in good faith were due and owing from Defendants, in violation of 29 U.S.C. §215(a)(3).

36. Defendants' violations of 29 U.S.C. §215(a)(3) were intentional and done with malice and reckless disregard for Plaintiff's rights under the FLSA.

37. Plaintiff has suffered damages as a direct result of Defendants' violations of 29 U.S.C. §215(a)(3).

38. Plaintiff has retained the undersigned counsel to represent him in this action, and pursuant 29 U.S.C. §216(b), Plaintiff is entitled to recover all reasonable attorney's fees and costs

from Defendants.

WHEREFORE, Plaintiff, DAMIAN BESIL, demands judgment against Defendants, jointly and severally, Defendants, CAFE PAPILLON INC. and JOSE REVILLA-ALBO, for back pay, employment benefits, compensatory damages including, but not limited to, damages for intangible injuries, punitive damages, equitable relief including but limited to reinstatement or front pay, injunctive relief, interest, attorneys' fees, costs, and such other and further relief as this Honorable Court deems proper.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: November 17, 2017

Respectfully submitted,

By: **s/KEITH M. STERN**
Keith M. Stern, Esquire
Florida Bar No. 321000
E-mail: employlaw@keithstern.com
Hazel Solis Rojas, Esquire
Florida Bar No. 91663
E-mail: hsolis@workingforyou.com
LAW OFFICE OF KEITH M. STERN, P.A.
One Flagler
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Telephone: (305) 901-1379
Facsimile: (561) 288-9031
Attorneys for Plaintiff

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), Café Papillon Inc., as well as any related entities and individuals, to seek recovery for violations of the Fair Labor Standards Act (FLSA) pursuant to 29 U.S.C. §216(b) *et seq.*

2. I hereby designate the Law Office of Keith M. Stern, P.A. to represent me in bringing my FLSA claims and to make decisions on my behalf concerning the litigation and settlement of these claims. I agree to be bound by any adjudication by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s), or any other potentially responsible parties, to assert my FLSA claims and for this Consent Form to be filed in any such action.

Damian Besil
Printed Name

Signature: DBesil

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 DAMIAN BESIL DEFENDANTS CAFE PAPILLON, INC. and JOSE REVILLA-ALBO

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Office of Keith M. Stern, P.A., Keith M. Stern, Esq., 14 NE 1st Avenue, Suite 800, Miami, Florida 33132, Tel: (305) 901-1379

(d) Check County Where Action Arose: [X] 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 Basis of Jurisdiction (U.S. Government Plaintiff/Defendant, Federal Question, Diversity) and Citizenship of Principal Parties (Citizen of This State, Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions

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

V. ORIGIN (Place an "X" in One Box Only) 1 Original Proceeding [X] 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 [X] NO b) Related Cases [] YES [X] 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. 216 - Action for Unpaid Overtime Wages

VIII. REQUESTED IN COMPLAINT: LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [] DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE November 17, 2017 SIGNATURE OF ATTORNEY OF RECORD s/Keith M. Stern

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DAMIAN BESIL, on behalf of himself
and others similarly situated,

Plaintiff(s)

v.

CAFE PAPIILLON INC., a Florida Corporation, and
JOSE REVILLA-ALBO, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CAFE PAPIILLON, INC.
c/o Registered Agent, Jose Revilla-Albo
1990 NE 163rd Street, Suite 215
North Miami, Florida 33160

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Keith M. Stern, Esq.
One Flagler
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Tel: (305) 901-1379

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DAMIAN BESIL, on behalf of himself
and others similarly situated,

Plaintiff(s)

v.

CAFE PAPILLON INC., a Florida Corporation, and
JOSE REVILLA-ALBO, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JOSE REVILLA-ALBO
267 NE 3rd Street
Miami, Florida 33132

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Keith M. Stern, Esq.
One Flagler
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Tel: (305) 901-1379

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Cook Claims FL's Café Papillon Owes Unpaid Overtime Wages](#)
