

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:17-cv-23765

JORGE BONILLA, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

VILLAGIO OF SAWGRASS, INC.,
a Florida corporation,
THOMAS BILLANTE, an individual and
KOSMAS KALAS, an individual,

Defendants.

COMPLAINT

Plaintiff, Jorge Bonilla (“Bonilla”), individually and on behalf of all others similarly situated, sues Defendants, Villagio of Sawgrass, Inc. (“Villagio”), Thomas Billante (“Billante”) and Kosmas Kalas (“Kalas”) (collectively Villagio, Billante and Kalas will be referred to as the “Defendants”), and avers:

PARTIES, JURISDICTION, AND VENUE

1. Bonilla is an individual who resides primarily in Broward County, Florida and is otherwise *sui juris*. Plaintiff’s written consent is attached hereto as Exhibit A.

2. Villagio is a Florida corporation with its principal place of business located in Broward County, Florida.

3. Billante is an individual who resides primarily in Miami-Dade County, Florida and is otherwise *sui juris*.

4. Kalas is an individual who resides primarily in Miami-Dade County, Florida and is

otherwise *sui juris*.

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) as this action arises under 29 U.S.C. § 207 and 215, the Fair Labor Standards Act ("FLSA").

6. Venue is appropriate in this district because: (1) a substantial part of the events or omissions giving rise to the claim occurred here; and/or (2) one or more of the Defendants regularly conduct business here.

GENERAL ALLEGATIONS

7. In or about November of 2013, Bonilla began working for Defendants at their restaurant located at 1760 Sawgrass Mills Cir, Sunrise, FL 33323 (the "Restaurant").

8. Bonilla worked in two positions, as a server and as a non-exempt manager, at the Restaurant.

9. Bonilla was not properly or fully compensated for his overtime hours in so far as the Defendants failed to pay him overtime at a blended rate as required by the FLSA and the regulations promulgated thereunder.

10. Bonilla was also improperly and insufficiently compensated in so far as he spent a substantial amount of time (*i.e.*, in excess of twenty percent of the hours worked in the tipped occupation in the workweek) performing related duties and therefore Defendants were not entitled to a tip credit for the time spent performing those duties. *See* 29 C.F.R. § 531.56(e).

11. Bonilla performed related duties that were neither incidental to the regular duties of a server nor that were generally assigned to tipped employees.

12. For example, Bonilla would perform management functions that are typically performed by a non-tipped employee while in the tipped position of server such as but not limited to helping supervise other servers and waitstaff, use his manager keycard to provide managerial

approval, address the needs of customers who had requested to speak to management, among other functions.

13. While in a tipped position, Bonilla would also perform other related duties that were not directed towards producing tips, such as supervising the preparatory and closing activities (often acting as the only manager on duty), handling preparatory and closing activities not performed by other servers and typically performed by managers, as well as supervising, checking in on, and, as necessary, assisting with various duties and restaurant functions such as cleaning, prepping, polishing, refilling condiments, and otherwise ensuring that everything was running smoothly and helping out at any and all non-server tasks that needed to be addressed, as is typically performed by a manager.

14. Defendants improperly applied a tip credit against Plaintiff's wages for Plaintiff's hours of employment in the related duties that exceeded twenty percent of the hours he worked in the tipped position.

15. Bonilla was also not fully or properly compensated for all of his time worked in so far as Defendants required and/or permitted pre- and post-shift work.

16. During the time period from September 28, 2014 to the present (the "Collective Action Time Period"), Bonilla and those similarly situated employees, current and former, worked as waiters, waitresses, hostesses, hosts, busboys, bartenders, bar backs, cooks, dishwashers, runners, and/or non-exempt managers for the Restaurant.

17. Plaintiff brings a collective action against his former employers for unpaid wages and overtime compensation owed to him and all other similarly situated employees, current and former, of Defendants who worked at the Restaurant at any time during the three-year period before this Complaint was filed up to the present (the "FLSA Class Members"). These class

members should be informed of the pendency of this action and apprised of their rights to join this action.

18. While working at the Restaurant, Plaintiff and the other FLSA Class Members were employees as that term is defined by 29 U.S.C. § 203(e), and also as that term is defined by Fla. Stat. § 448.07, and were engaged in commerce or in the production of goods for commerce.

19. Villagio is an enterprise engaged in an industry affecting commerce, is an employer as defined by 29 U.S.C. § 203(d) and (s)(1), in that it has employees engaged in commerce or in the production of goods for commerce, or that it has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and it is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) which has employees subject to the provisions of the FLSA, 29 U.S.C. § 207, in the Restaurant where Bonilla and the other FLSA Class Members were employed.

20. At all times pertinent to this claim, Villagio operated as an organization which sold and/or marketed its services throughout the United States, solicited and obtained business from residents of other states and otherwise regularly engaged in interstate commerce.

21. At all times pertinent to this claim, Billante and Kalas were officers of Villagio, acted as managers and/or operators of Villagio and acted directly in the interests of Villagio in relation to its employees including, without limitation, setting pay and setting work schedules. Thus, Billante and Kalas were employers within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

22. During the Collective Action Time Period, Defendants failed to pay Plaintiff and the other FLSA Class Members for all hours worked, including overtime hours, at the rates required by the FLSA in violation of the FLSA.

23. During the Collective Action Time Period, Defendants failed to pay overtime to the FLSA Class Members for all hours worked in excess of forty (40) hours per week violation of the FLSA.

24. During the Collective Action Time Period, Defendants underpaid Bonilla and those similarly situated by failing to pay overtime at the rates required under the FLSA for employees who work in more than one position with a different rate of pay.

25. Plaintiff and the other FLSA Class Members are non-exempt employees under the FLSA.

26. During the Collective Action Time Period, Defendants failed to pay Plaintiff and the other FLSA Class Members for all hours worked in violation of Article X, § 24 of the Florida Constitution and Fla. Stat. § 448.110.

27. As part of their regular business practices, Defendants have intentionally, willfully and repeatedly harmed Plaintiff and the other FLSA Class Members by engaging in a pattern, practice or policy of violating the FLSA on a class wide basis.

28. Although Defendants permitted and/or required Plaintiff and other FLSA Class Members to work in excess of forty (40) hours per workweek, Defendants have denied them full compensation for their hours worked in excess of forty (40) hours per week.

29. Although Defendants permitted and/or required Plaintiff and other FLSA Class Members to work, Defendants have denied them full compensation for all hours worked in so far as, inter alia, Defendants improperly applied a tip credit to employees in tipped positions who

spent a substantial amount of time (in excess of twenty percent) performing related duties and/or duties not required of other employees in those tipped positions.

30. The FLSA Class Members performed the same or similar work as Plaintiff. In particular, Plaintiff and the other FLSA Class members all worked in one or more non-exempt positions, specifically, as waiters, waitresses, hostesses, hosts, busboys, bartenders, bar backs, cooks, dishwashers, runners, and/or non-exempt managers, for the Restaurant, under the same conditions and subject to the same violations of the FLSA.

31. The other FLSA Class Members are similarly situated to Plaintiff in that many regularly work or have worked in excess of forty (40) hours during a workweek, without receiving compensation at the mandatory and applicable time-and-a-half overtime rate for the hours exceeding forty (40) in a workweek.

32. The other FLSA Class Members are similarly situated to Plaintiff in that many regularly worked for Defendants without receiving full compensation for all hours they worked.

33. The other FLSA Class Members are similarly situated to Plaintiff in that many regularly worked for Defendants without receiving full compensation for all hours that they worked in so far as Defendants improperly applied a tip credit to other tipped employees who spent a substantial amount of time performing related duties.

34. As such, the FLSA Class Members are similarly situated to Plaintiff in terms of job duties, pay structure, denial of minimum wage pay and/or denial of overtime pay owed.

35. The experience of Plaintiff with respect to his pay is typical of the experience of the other FLSA Class Members.

36. The experience of Plaintiff with respect to his job duties is typical of the experiences of the other FLSA Class Members.

37. The specific job titles or precise job responsibilities of the other FLSA Class Members do not prevent collective treatment.

38. Plaintiff and the other FLSA Class Members are entitled to overtime compensation for hours worked in excess of forty (40) hours per week.

39. Plaintiff and the other FLSA Class Members are entitled to overtime compensation for all hours worked in excess of forty (40) hours per week at the full applicable rate pursuant to the FLSA and implementation regulations promulgated thereunder pertaining to employees who work in two or more positions.

40. Plaintiff and the other FLSA Class Members are entitled to be paid for all hours worked at minimum wage.

41. Although the exact amount of damages may vary among the FLSA Class Members, the damages can be easily calculated by a formula. The claims of the FLSA Class Members all arise from a common nucleus of operative facts. Liability is based on a systematic course of wrongful conduct that caused harm to all of the FLSA Class Members.

42. The Defendants instituted, permitted, and/or required policies and practices that resulted in the Plaintiff and other FLSA Class Members being deprived of wages they were owed pursuant to the FLSA, including but not limited to full overtime pay for all hours worked in excess of forty (40) in a workweek and proper minimum wage exclusive of a tip credit for tipped employees who perform substantial related work.

Conditions Precedent, Attorneys' Fees and Costs

43. The Plaintiff has retained the undersigned firm to represent him in this action and is obligated to pay reasonable attorneys' fees and costs for services rendered.

44. All conditions precedent to this action have occurred or been satisfied or waived.

COUNT I
VIOLATION OF FLSA FOR FAILURE TO PAY OVERTIME
AND FAILURE TO PAY OVERTIME AT APPLICABLE RATE
(Against Villagio, Billante and Kalas)

45. Plaintiff, individually and on behalf of all others similarly situated, realleges the allegations contained in paragraphs 1 through 44 above as though fully set forth herein.

46. This is an action against Defendants for willful violations of the FLSA, including 29 U.S.C. §§ 206, 207 et seq.

47. From November of 2013 until December of 2016, Plaintiff worked at the Restaurant continuously in excess of forty (40) hours per week.

48. For the entire length of Plaintiff's employment at the Restaurant he was not properly compensated for the time he spent working in excess of forty (40) hours per week in violation of the FLSA's minimum wage and overtime requirements.

49. Although Plaintiff was paid some overtime by Defendants, even when Defendants paid Plaintiff some of the overtime he was owed, Defendants paid Plaintiff at a lower rate than should have applied under the FLSA.

50. Since Plaintiff was employed in two different positions with different rates of pay, Defendant was required to pay Plaintiff overtime based on a blended rate. *See* 29 C.F.R. § 778.115.

51. The FLSA Class Members worked at the Restaurant at various times during the Collective Action Period.

52. During the FLSA Class Members' employment at the Restaurant, the FLSA Class Members were not paid full compensation owed for overtime for all hours worked in excess of forty (40) hours per week in violation of the FLSA's overtime requirements.

53. By failing to properly and fully compensate Bonilla, and the other FLSA Class Members, for the time they worked in excess of forty (40) hours per week, Defendants have willfully violated the provisions of the FLSA.

54. During Bonilla and the other FLSA Class Members' employment at the Restaurant, Bonilla and the other FLSA Class Members were not paid overtime at the correct rate for all hours worked in excess of forty (40) hours per week in violation of the FLSA's overtime requirements for employees who work in two or more positions that have different rates of pay.

55. Defendants' actions were willful and purposeful as they were well aware of the FLSA's requirements for payment of all hours worked and for payment of overtime wages at the overtime rate for non-exempt employees such as Bonilla and those similarly situated.

56. None of the exemptions provided by the FLSA regulating the duty of employers to pay employees for all hours worked at the required minimum wage rate are applicable to Defendants or Plaintiff and the other FLSA Class Members.

57. None of the exemptions provided by the FLSA regulating the duty of employers to pay employees at a time-and-a-half rate for all hours worked in excess of forty (40) in a given workweek are applicable Defendants or Plaintiff and the other FLSA Class Members.

58. Defendants failed to make, keep and/or preserve adequate records of Plaintiff and the other FLSA Class Members' wages, work hours, pay, and other conditions and practices of employment maintained by Defendants in violation of section 211(c) of the FLSA. *See* 29 U.S.C. § 211(c).

59. Defendants failed to make, keep and/or preserve accurate records of Plaintiff and the other FLSA Class Members' wages, work hours, pay, and other conditions and practices of

employment maintained by Defendants in violation of section 211(c) of the FLSA. *See* 29 U.S.C. § 211(c).

60. Defendants failed to keep adequate and accurate payroll records that include all information required to be maintained by employers under Federal Law pursuant to 29 C.F.R. §§ 516.2, 516.5.

61. Pursuant to 29 U.S.C. § 216(b), Plaintiff, and the other FLSA Class Members, are entitled to recover from Defendants:

- (a) all unpaid overtime that is due;
- (b) compensation for all hours worked for which they were not compensated;
- (c) an amount equal to the unpaid overtime owed as liquidated damages;
- (d) the costs of this action; and
- (e) reasonable attorneys' fees.

COUNT III
QUANTUM MERUIT
(Against Villagio)

62. Plaintiff realleges the allegations contained in paragraphs 1-44, as though fully set forth herein.

63. This is an action for Quantum Meruit.

64. Plaintiff and those similarly situated conferred a substantial benefit on Villagio in the form of provisioning labor, in the form of waiter, managerial and related services, to the Restaurant.

65. Villagio had actual knowledge of the services provided by Bonilla and those similarly situated and the benefit conferred upon them as a result of receiving these services.

66. Villagio accepted and appreciated the services provided by Bonilla and those similarly situated to the Restaurant.

67. Villagio has not paid Bonilla and those similarly situated full compensation for all of the hours Bonilla worked at the Restaurant.

68. Under these circumstances, Villagio should be required to pay Bonilla and those similarly situated the reasonable value of the services Bonilla provided to Villagio.

WHEREFORE, Bonilla, and the other FLSA Class Members, demand judgment as follows:

I. On Count I, for damages against Villagio, Billante, and Kalas, jointly and severally, including, without limitation, all unpaid overtime that is due, an amount equal to the unpaid wages as liquidated damages, prejudgment interest, the costs of this action and reasonable attorneys' fees;

II. On Count III, for damages against Villagio including without limitation all actual and consequential damages, including but not limited to unpaid regular wages and overtime wages that are due and liquidated damages therefor, prejudgment interest, the costs of this action and reasonable attorneys' fees; and

III. On all Counts, for such other and further relief as may be available to Bonilla and the other FLSA Class Members.

DEMAND FOR JURY TRIAL

Plaintiff and the FLSA Class Members demand a jury trial on all issues so triable.

Dated: Oct. 13, 2017.

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Respectfully submitted,

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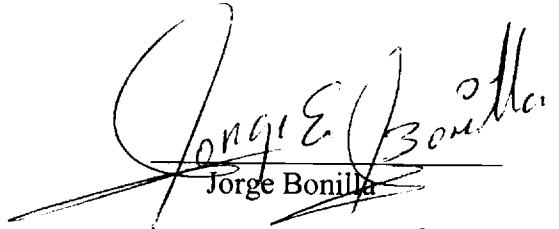
PETER JOSEPH MATHEWS

Florida Bar No. 94675

CONSENT TO BECOME PARTY PLAINTIFF

I, Jorge Bonilla, understand that this lawsuit is being brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201. I hereby consent and agree in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act to become a party Plaintiff in this action and to be bound by any judgment of the Court or any settlement of this action.

I further hereby designate and appoint the Law Firm of Obront Corey, PLLC to represent me for all purposes in this action.


Jorge Bonilla
10-02-17
Date

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Villagio of Sawgrass Named in Lawsuit Alleging Unpaid OT, Improper Tip Credit](#)
