

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

CASE NO.: _____

SMADAR CHERA, and other
similarly situated non-exempt employees,

Plaintiff,

v.

SHERRY FRONTENAC RESORTS, INC.,
a Florida Profit Corporation and
JOEL SUSSMAN, individually,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446, Defendant, SHERRY FRONTENAC RESORTS, INC. (“Defendant”) hereby invokes the jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1441 and states the following grounds for removal of this case from the Circuit Court in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida:

REMOVAL JURISDICTION

1. This Court has original jurisdiction over this action because it involves a claim alleging violation of federal law, the Fair Labor Standards Act (FLSA).

TIMELINESS OF REMOVAL

2. On January 2, 2018 Plaintiff, Smadar Chera (“Plaintiff”) commenced a civil action against Defendant by filing a Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 17-029565-CA-01. A true and correct copy of the Complaint is attached as Exhibit “A.”

CASE NO.: _____

3. Plaintiff served Defendant with the Complaint on January 13, 2018.¹

4. Defendant has not served any answer or responsive pleading to Plaintiff's Complaint.

5. This Notice is filed with this Court within thirty (30) days after Defendant received a copy of the Complaint upon which this action is based, and before any proceedings were had thereupon in the Circuit Court. This removal is timely pursuant to 28 U.S.C. § 1446(b).

6. In accordance with 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, documents, and orders which have been served upon Defendant are attached hereto as Exhibit "A."

FEDERAL QUESTION JURISDICTION

7. This Court has original jurisdiction in this action pursuant to 28 U.S.C. § 1331 because Plaintiff alleges in the Complaint a violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* See Complaint (Wage and Hour Federal Statutory Violations).

VENUE

8. Venue lies in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

9. Defendant submits this Notice of Removal without waiving any defenses or affirmative defenses to the claims asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted.

10. Contemporaneously with this filing, Defendant also is filing a Notification of Removal with the Clerk of the Court for the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, as required by 28 U.S.C. § 1446(d). A true and accurate copy of the Notification of Removal is attached as Exhibit "B."

¹ The individual Defendant has not yet been served so this notice is not made on behalf of the individual Defendant.

CASE NO.: _____

WHEREFORE, Defendant, SHERRY FRONTENAC RESORTS, INC., respectfully requests this action be removed from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida.

Respectfully submitted,

/s/ Mendy Halberstam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notice of Electronic Filing generated by CM/ECF and Electronic Mail.

s/Mendy Halberstam
Mendy Halberstam, Esq.

CASE NO.: _____

SERVICE LIST

United States District Court for the Southern District of Florida
Smadar Chera v. Sherry Frontenac Resorts, Inc., et al.

Case No. _____

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Attorneys for Defendant

EXHIBIT "A"

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

Case No. 2017-029565-CA-01

SMADAR CHERA,
and other similarly situated non-exempt employees,

Plaintiff(s),

v.

SHERRY FRONTENAC RESORT, INC
a Florida Profit Corporation and
JOEL SUSSMAN, Individually.

Defendant (s).

DATE: 1/13/18

TIME: 11:20a

INITIALS: AF

ID #: 2365

SUMMONS IN A CIVIL CASE

TO: SHERRY FRONTENAC RESORT, INC., through its Registered Agent:

Joel Sussman
6565 Collins Ave
Miami Beach, FL 33141

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

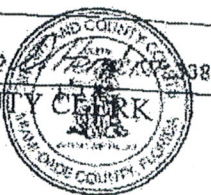
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

1/5/2018.

CLERK

(BY) DEPUTY



DATE

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

Case No. 2017-029565-CA-01

SMADAR CHERA,
and other similarly situated non-exempt employees,

Plaintiff(s),

v.

SHERRY FRONTENAC RESORT, INC
a Florida Profit Corporation and
JOEL SUSSMAN, Individually.

Defendant (s).

COMPLAINT

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

COMES NOW, the Plaintiff, SMADAR CHERA ("Plaintiff"), on behalf of herself and other current and former similarly situated employees, by and through undersigned counsel, hereby files this Complaint against Defendants, SHERRY FRONTENAC RESORT, INC a Florida Profit Corporation and JOEL SUSSMAN, Individually (collectively the "Defendants") and states as follows:

JURISDICTION

1. This is an action by the Plaintiff and other similarly-situated non-exempt employees for damages exceeding \$15,000 excluding attorneys' fees or costs pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the "FLSA") to recover unpaid overtime and/or minimum wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorneys' fees and costs.

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 Miami Dade County Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the FLSA.
4. Defendant, SHERRY FRONTENAC RESORT, INC, having 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, JOEL SUSSMAN, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, SHERRY FRONTENAC RESORT, INC.
6. Venue is proper in Miami Dade County because all of the actions that form the basis of this Complaint occurred within Miami Dade County and payment was due in Miami Dade County.
7. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

8. Plaintiff was employed by Defendants from approximately March 22, 2017 through on or about September 11, 2017, as a non-exempt bar laborer.
9. At all times material hereto, 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.

10. During Plaintiff's employment, Defendant failed to compensate Plaintiff the required overtime and/or minimum wages at a rate of one and a half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) within a single work week.
11. During the relevant time period Plaintiff, performed approximately twenty (20) hours of overtime each week for which Defendants failed to pay Plaintiff at one-and-one-half times her regular rate of pay.
12. At all times material hereto Defendants had or should have had full knowledge of all hours worked by Plaintiff, including those hours worked by Plaintiff in excess of forty (40) in a given week.
13. Plaintiff was paid approximately eight fifty (\$8.50) dollars an hour per hours worked weekly.
14. Plaintiff's overtime rate is \$12.75 ($\8.50×1.5). Plaintiff seeks this rate for each of Plaintiff's approximate twenty (20) hours of overtime.
15. As such, Plaintiff is owed approximately \$6,120.00 ($\12.75 overtime rate \times 20 hours of overtime \times 24 weeks in **unliquidated** overtime wages).
16. Therefore, Plaintiff is owed approximately \$6,120.00 in unpaid overtime wages, plus an additional equal amount as **liquidated** damages, totaling \$12,240.00.
17. Plaintiff claims there are other similarly situated current and former non-exempt employees working, or previously working, for Defendants/Defendant.
18. Plaintiff and other similarly-situated current and former non-exempt employees performed similarly duties for Defendants/Defendant and were subject to similar policies as to compensation.

19. Plaintiff and other similarly-situated current and former non-exempt employees of Defendants/Defendant would benefit from joining this collective action alleged herein.

COUNT 1

***Wage & Hour Federal Statutory Violation Against
SHERRY FRONTENAC RESORT, INC***

20. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 19 of this complaint as if set out in full herein.
21. This action is brought by Plaintiff to recover from Defendant unpaid overtime wage compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 *et seq.*
22. Jurisdiction is conferred on this Court by Title 29 U.S.C. § 216(b).
23. 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.
24. 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.
25. 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.

26. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire.
27. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of overtime wages 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. To the extent that Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to overtime and minimum wage payments, the statute of limitations for Plaintiff's FLSA claims is equitably tolled. *See, e.g., Cruz v. Maypa*, 773 F.3d 138, 147 (4th Cir. 2014) (extending failure-to-post tolling in the ADEA context to the FLSA); *Yu G. Ke v. Saigon Grill, Inc.*, 595 F. Supp. 2d 240, 259 (S.D.N.Y. 2008) ("[F]ailure to provide required notice of the governing legal requirements may be a sufficient basis for tolling."); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Pa. 1984) ("An employer's failure to post a statutorily required notice of this type tolls the running of any period of limitations.").

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 overtime wage compensation for hours worked in excess of forty (40) weekly, with interest;
- C. Award Plaintiff an equal amount in double damages/liquidated damages;

- 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 III

*Wage & Hour Federal Statutory Violation Against
JOEL SUSSMAN
(Non-Payment of Wages)*

29. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 19,
of this Complaint as if set out in full herein.
30. At the times mentioned, Defendant **JOEL SUSSMAN** was, and is now, a corporate
officer of corporate Defendant **SHERRY FRONTENAC RESORT, INC.**
31. Defendant **JOEL SUSSMAN** 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 **JOEL
SUSSMAN** 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 **JOEL SUSSMAN**, 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

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)

34. Defendant **JOEL SUSSMAN** 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.

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

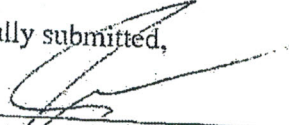
- A. Adjudge and decree that Defendant **JOEL SUSSMAN** has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Adjudge and decree that Defendant **JOEL SUSSMAN** is an individual with operational control and is, thus, jointly and severally 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.

JURY DEMAND

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

Dated 12-5-17

Respectfully submitted,



Jason S. Remer, Esq.
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jremer@rgpattoorneys.com
Brody M. Shulman, Esq.
Fla. Bar No.: 092044

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Facsimile: (305) 416-5005

EXHIBIT "B"

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

CASE NO. 17-029565-CA-01

SMADAR CHERA, and other
similarly situated non-exempt employees,

Plaintiff,

v.

SHERRY FRONTENAC RESORTS, INC.,
a Florida Profit Corporation and
JOEL SUSSMAN, individually,

Defendants.

DEFENDANT'S NOTICE OF FILING NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant, SHERRY FRONTENAC RESORTS, INC. (“Defendant”) pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446 has removed the above-styled action from the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida to the United States District Court for the Southern District of Florida.

Attached hereto as Exhibit “1” is a copy of the Notice of Removal which has been filed in the United States District Court, Southern District of Florida.

Dated: February 9, 2018
Miami, Florida

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Respectfully submitted,

/s/ Mendy Halberstam

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of February 2018, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court by using Florida Courts E-filing Portal and furnished via electronic mail to:

Jason S. Remer, Esq.

Florida Bar No. 0165580

E-mail: jremer@rgpattorneys.com

Brody M. Shulman, Esq.

Florida Bar No. 092044

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Facsimile: (305) 416-5005

Attorneys for Plaintiff

s/Mendy Halberstam

Mendy Halberstam, Esq.

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 SMADAR CHERA DEFENDANTS SHERRY FRONTENAC RESORTS, INC. and JOEL SUSSMAN

(b) County of Residence of First Listed Plaintiff (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) Jason Remer/Brody Shulman, Remer & Georges-Pierre, PLLC, 44 W. Flagler Street, Ste. 2200, Miami, FL 33130, Tel. 305-416-5000 Mendy Halberstam/Valerie Hooker, Jackson Lewis P.C., 2 S. Biscayne Blvd., Ste. 3500, Miami, FL 33131, Tel. 305-577-7600

(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 Country).

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, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, 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): Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq LENGTH OF TRIAL via 4 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 \$ 15,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 02/09/18 SIGNATURE OF ATTORNEY OF RECORD s/Mendy Halberstam

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sherry Frontenac Resorts Hit with Unpaid OT Lawsuit](#)
