

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

GERALD ESTIVENE
and other similarly-situated individuals,

Plaintiff (s),

v.

HOST INTERNATIONAL, INC.
a/k/a HMS HOST RESTAURANT

Defendant,

_____ /

COMPLAINT

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

COMES NOW the Plaintiff GERALD ESTIVENE, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendant HOST INTERNATIONAL, INC. a/k/a HMS HOST RESTAURANT, and alleges:

JURISDICTION VENUES AND PARTIES

1. This is an action to recover money damages for off-the clock unpaid regular hours under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”).
2. Plaintiff GERALD ESTIVENE is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant HOST INTERNATIONAL, INC. a/k/a HMS HOST RESTAURANT (hereinafter HMS HOST RESTAURANT, or Defendant) is a foreign corporation

authorized to perform business in Florida. Defendant has place of business in Miami-Dade County, Florida, where Plaintiff worked for Defendant, and at all times material hereto, Defendant was engaged in interstate commerce.

4. All the action raised in this complaint took place in Dade County Florida, within the jurisdiction of this Court.

GENERAL ALLEGATIONS

5. This cause of action is brought by Plaintiff GERALD ESTIVENE to recover from Defendant regular wages, liquidated damages, and the costs and reasonably attorney's fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT").
6. Corporate Defendant HMS HOST RESTAURANT is a chain of restaurants doing business at prime locations in Florida and throughout United States.
7. Defendant HMS HOST RESTAURANT employed Plaintiff GERALD ESTIVENE from approximately November 9, 1998, to December 17, 2017, or more than 19 years. However, for FLSA purposes Plaintiff's relevant period of employment is 149 weeks.
8. Plaintiff worked at HMS HOST RESTAURANT located at Miami International Airport.
9. Plaintiff was a non-exempt hourly employee, he worked as a kitchen cleaner, and janitor performing general restaurant cleaning. Plaintiff last wage rate was \$13.65 an hour.
10. During the relevant period of employment with Defendant, Plaintiff worked a regular schedule; Plaintiff worked a minimum of 4 days per week, usually on Sundays, Mondays, Tuesdays and Wednesdays, from 3:30 PM to 11:00 PM. Plaintiff completed a minimum of 30 hours per week. Sometimes Plaintiff worked more than 4 days with more than 30 hours

per week, but he never worked more than 40 hours per week. Plaintiff was not able to take bona fide lunch breaks.

11. Plaintiff clocked in and out on a computer. Plaintiff was paid bi-weekly with checks and paystubs reflecting less than 40 hours every week period.
12. Nevertheless, Plaintiff was not paid for 4 hours that Plaintiff worked off- the clock every week.
13. Plaintiff was required to clock out at 11:00 PM every day, but he was forced by his supervisor to stay working to complete the cleaning work, a minimum of 1 hour every night. These of the clock hours which were produced every night after 11:00 PM, resulted in a minimum of 4 unpaid regular hours every week.
14. During the relevant period of employment, or 149 weeks, Plaintiff worked at least 4 overtime hours in every week period that were not compensated at any rate, not even at the minimum wage rate.
15. Therefore, Plaintiff was not paid his regular wages for all the hours that he worked in a week period, in violation of FLSA provisions.
16. Plaintiff resigned from his employment on or about April 4, 2018, to pursue better employment opportunities.
17. Plaintiff GERALD ESTIVENE seeks to recover any unpaid regular wages, and any other relief as allowable by law.
18. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid minimum and overtime wages at

the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:
F.L.S.A. WAGE AND HOUR FEDERAL STATUTORY VIOLATION:
FAILURE TO PAY MINIMUM WAGE

19. Plaintiff GERALD ESTIVENE re-adopts each and every factual allegation as stated in paragraphs 1-18 of this complaint as if set out in full herein.
20. Defendant HMS HOST RESTAURANT was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) (1)(A). The Defendant is a restaurant business operating in different Airports across United States and, through its business activity, affects interstate commerce. Defendant has more than two employees recurrently engaged in commerce or in the production of goods or services for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.
21. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a kitchen cleaner and janitor, and through his daily activities, Plaintiff maintained in sanitary conditions a business serving mostly to airline passengers.

22. This action is brought by Plaintiff to recover from the Employer unpaid minimum wages, 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., and specifically under the provisions of 29 U.S.C. §206. U.S.C. §206 states "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after May 25, 2008;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day.

23. Defendant HMS HOST RESTAURANT employed Plaintiff GERALD ESTIVENE from approximately November 9, 1998, to December 17, 2017, or more than 19 years. However, for FLSA purposes Plaintiff's relevant period of employment is 149 weeks.

24. Plaintiff worked at HMS HOST RESTAURANT located at Miami International Airport.

25. Plaintiff was a non-exempt hourly employee, he worked as a kitchen cleaner, and janitor performing general restaurant cleaning. Plaintiff last wage rate was \$13.65 an hour.

26. During the relevant period of employment with Defendant, Plaintiff worked a regular schedule; Plaintiff worked a minimum of 4 days per week, usually on Sundays, Mondays, Tuesdays and Wednesdays, from 3:30 PM to 11:00 PM. Plaintiff completed a minimum of 30 hours per week. Sometimes Plaintiff worked more than 4 days with more than 30 hours per week, but he never worked more than 40 hours per week. Plaintiff was not able to take bona fide lunch breaks.

27. Plaintiff clocked in and out on a computer. Plaintiff was paid bi-weekly with checks and paystubs reflecting less than 40 hours every week period.
28. Nevertheless, Plaintiff was not paid for 4 hours that Plaintiff worked off- the clock every week.
29. Plaintiff was required to clock out at 11:00 PM every day, but he was forced by his supervisor to stay working and completing the cleaning work, a minimum of 1 hour every night. These of the clock hours which were produced every night after 11:00 PM, resulted in a minimum of 4 unpaid regular hours every week.
30. Therefore, Plaintiff was not paid his regular wages for all the hours that he worked in a week period, in violation of FLSA provisions.
31. The records, if any, concerning the number of hours actually worked by Plaintiff and all other employees, and the compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant did not maintain accurate and complete time records of hours worked by Plaintiff.
32. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.
33. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid wages are as follows:

*Please note that this are preliminary calculations, which will be adjusted after proper discovery.

*Florida minimum wage is higher than the Federal minimum wage. As per FLSA regulations the higher minimum wage applies.

a. Total amount of alleged unpaid wages:

Four Thousand Eight Hundred Eighteen Dollars and 60/100 (\$4,818.60)

b. Calculation of such wages:

Total relevant weeks of employment: 149 weeks
Total of weeks with unpaid off the clock hours: 149 weeks
Total off the clock hours worked: 4 off-the clock hours per week
Regular rate: \$13.65

I. Calculation off-the clock hours for 2015 and 2016 @ \$8.05 an hour
(from May 24, 2015 to December 30, 2016 = 84 weeks)

Total of weeks with unpaid off the clock hours: 84 weeks
Total off-the clock hours worked: 4 off-the clock hours per week
Florida minimum wage 2015/2016: \$8.05 an hour

$\$8.05 \times 4 \text{ off-the clock hours} = \$32.20 \text{ weekly} \times 84 \text{ weeks} = \$2,704.80$

II. Calculation off-the clock hours for 2017 @ \$8.10 an hour
(from January 1, 2017, to December 30, 2017 = 52 weeks)

Total of weeks with unpaid off the clock hours: 52 weeks
Total off-the clock hours worked: 4 off-the clock hours per week
Florida minimum wage 2017: \$8.10 an hour

$\$8.10 \times 4 \text{ off-the clock hours} = \$32.40 \text{ weekly} \times 52 \text{ weeks} = \$1,684.80$

III. Calculation off-the clock hours for 2018 @ \$8.25 an hour
(from January 1, 2018, to April 4, 2018 = 52 weeks)

Total of weeks with unpaid off the clock hours: 52 weeks
Total off-the clock hours worked: 4 off-the clock hours per week
Florida minimum wage 2017: \$8.25 an hour

$\$8.25 \times 4 \text{ off-the clock hours} = \$33.00 \text{ weekly} \times 13 \text{ weeks} = \429.00

Total I, II, and III: \$4,818.60

c. Nature of wages:

This amount represents unpaid off-the clock unpaid regular wages at Florida minimum wage rates.

34. Defendant HMS HOST RESTAURANT unlawfully failed to pay minimum wages to Plaintiff. Plaintiff seeks to recover any unpaid wages accumulated during the relevant employment period.

35. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of minimum wages as required by the Fair Labor Standards Act and remains owing Plaintiff these minimum wages.
36. 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. Defendant violated the Posting requirements of 29 U.S.C. § 516.4.
37. Defendant HMS HOST RESTAURANT willfully and intentionally refused to pay Plaintiff minimum wages as required by the law of the United States and remain owing Plaintiff these minimum wages as set forth above.
38. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff GERALD ESTIVENE respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff and against the Defendant HMS HOST RESTAURANT on the basis of Defendant's willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid minimum wages, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff GERALD ESTIVENE and those similarly-situated demand trial by jury of all issues triable as of right by jury.

Dated: May 24, 2018

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
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9100 S. Dadeland Blvd.
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Miami, FL 33156
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Attorney for Plaintiff

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 GERALD ESTIVENE

DEFENDANTS HOST INTERNATIONAL, INC. a/k/a HMS HOST RESTAURANT

(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)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Zandro E. Palma, P.A. 9100 S. Dadeland Blvd., Ste 1500, Miami, FL 33156 (305-446-1500)

Attorneys (If Known)

(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)

- [X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- PTF DEF
Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

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

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- [X] 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 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO

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

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: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE May 24, 2018

SIGNATURE OF ATTORNEY OF RECORD

Zandro E. Palma, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP 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: [Off-the-Clock Work at Host International to Blame for Unpaid Wages, Lawsuit Claims](#)
