

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NERLINE MICHEL, individually and
on behalf of other similarly situated,

Plaintiff,

v.

VISTANA MANAGEMENT, INC.,
DBA SHERATON'S VISTANA
RESORT, a Florida for Profit
Corporation,

Defendant.

Case No.: 6:17-cv-2085-ORL-22 DCI

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, NERLINE MICHEL, individually and on behalf of other similarly situated (hereinafter referred to as "Plaintiff"), by and through the undersigned attorney, sues the Defendant, VISTANA MANAGEMENT, INC. DBA SHERATON'S VISTANA RESORT, (hereinafter referred to as "Defendant"), and alleges as follows:

INTRODUCTION

1. This is an action by the Plaintiff against his former employer for overtime wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 206 and 29 U.S.C. § 216(b) (the "FLSA"), and any other relief available.

2. This action is brought under the FLSA to recover from Defendant overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

PARTIES

3. During Plaintiff's employment with Defendant, she served as a "housekeeper" and performed related activities at Defendant's place of business located at 8800 Vistana Drive, Orlando, Florida 32821.

4. Defendant is a Florida Corporation which operates and conducts business in the Orlando (Central Florida), Orange County, Florida, and is therefore within the jurisdiction of this Court.

JURISDICTION

5. This action arises under the FLSA, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 206 and 29 U.S.C. § 216(b).

VENUE

6. The venue of this Court over this controversy is proper based upon the claim arising in Orlando (Central Florida), Orange County, Florida.

FACTS

7. Defendant employed Plaintiff at their business within the relevant time period (2016 – 2017).¹

8. Plaintiff worked for Defendant without being paid the proper overtime pay, premium rate of time and one-half her regular rate of pay, for all hours worked in excess of forty (40) hours within a work week.

¹ All references to material times relevant to this action shall mean to encompass from 2014 through 2017.

9. Specifically, Defendant paid a regular rate of pay for regular hours worked as well as for overtime hours worked and would classify this “straight overtime pay” as “Non Working” pay on its paystubs.

10. Defendant paid Plaintiff and other housekeepers a “non working” pay for overtime hours worked.

11. If Plaintiff worked more than forty (40) hours in a week, Defendant only paid “straight pay”.

12. If Plaintiff and other housekeepers worked overtime, Defendant would pay them their regular rate of pay.

13. Defendant paid Plaintiff and other housekeepers in this manner to purposefully avoid paying the premium overtime rate of pay.

14. Defendant controlled and/or was responsible for the work of Plaintiff.

15. Plaintiff worked as a “housekeeper” for Defendant from February 16, 2016 through July 1, 2017, and performed related activities in Orlando (Central Florida), Orange County, Florida.

16. In this capacity, Plaintiff was responsible for cleaning hotel rooms.

17. Plaintiff regular rate of pay was \$10.11 per hour.

18. Plaintiff was not paid proper overtime wages for all hours worked on a weekly basis throughout her period of employment.

19. Despite working more than forty (40) hours per week, Plaintiff was not paid all compensation for hours worked over forty (40) hours within a work week during several weeks of employment.

20. Defendant was aware of the overtime hours worked.

21. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of the Defendant.

COVERAGE

22. At all material times relevant to this action, Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

23. At all material times relevant to this action, Defendant made gross earnings of at least \$500,000 annually.

24. At all material times relevant to this action, Defendant accepted payments from customers based on credit cards issued by out-of-state banks, nationwide.

25. At all material times relevant to this action, Defendant routinely ordered materials, merchandise, products, and supplies from out-of-state vendors and/or entities (i.e., towels, bedroom sheets, curtains, furniture, televisions, cleaning products and supplies, etc.).

26. At all material times relevant to this action, Defendant had two (2) or more employees engaged in commerce, handling or otherwise working on materials that have been moved in or produced for commerce (i.e., towels, bedroom sheets, curtains, furniture, televisions, cleaning products and supplies, etc.).

27. At all material times relevant to this action, Plaintiff was individually engaged in commerce during her employment with Defendant, by working with a wide array of cleaning products, supplies and goods.

COLLECTIVE/CLASS ALLEGATIONS

28. Plaintiff and the class members performed the same or similar job duties as one another for Defendant in that they provided laboring and cleaning services.

29. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

30. Thus, the class members are owed overtime compensation for the same reasons as Plaintiff.

31. Defendant's failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that housekeepers were paid for all overtime hours worked based on the Defendant's failure to credit the housekeepers with all hours worked and paying a regular rate of pay for overtime work performed.

32. This policy or practice was applicable to Plaintiff and the class members.

33. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the same policies or practices which resulted in the non-payment of overtime to Plaintiff also apply to all class members.

34. Accordingly, the class members are properly defined as:

All hourly paid employees whom worked for Defendant, VISTANA MANAGEMENT, INC. DBA SHERATON'S VISTANA RESORT, within the state of Florida within the last three (3) years and whom were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

35. The precise size and identity of the class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendant.

36. The exact number of members of each class can be determined by reviewing Defendant's records. Plaintiff, under information and belief, is informed there are numerous of eligible individuals in the defined class.

37. Defendant failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

38. Defendant was aware of the requirements of the FLSA, yet it acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

39. Plaintiff has hired the undersigned law firm to represent her in this matter and is obligated to pay them reasonable attorneys' fees and costs if they prevail.

40. The claims under the FLSA may be pursued by others who opt-in to this case pursuant to 29 U.S.C. § 216(b).

41. A collective action suit, such as the underlying, is superior to other available means for fair and efficient adjudication of the lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the wrongs done to them

COUNT I
RECOVERY OF OVERTIME COMPENSATION
AGAINST VISTANA MANAGEMENT, INC.

42. Plaintiff reincorporates and readopts all allegations contained within paragraphs 1 through 41 above.

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

44. During Plaintiff's employment with Defendant, VISTANA MANAGEMENT, INC., Plaintiff worked overtime hours but was not paid time and one-half her regular rate of pay for the same during several weeks.

45. As a result of Defendant's intentional, willful, and unlawful acts in refusing to pay Plaintiff time and one-half her regular rate of pay for each hour worked in excess of forty (40) hours per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

46. Defendant neither maintained nor kept accurate time records as required by the FLSA for Plaintiff.

47. Also, Defendant failed to post required FLSA informational listings as required by law.

48. As a result of Defendant's willful violation of the FLSA, Plaintiff is entitled to liquidated damages.

WHEREFORE, Plaintiff, NERLINE MICHEL, individually and on behalf of other similarly situated demands judgment against Defendant, VISTANA MANAGEMENT, INC. DBA SHERATON'S VISTANA RESORT, for the payment of all unpaid wages, overtime hours at time and one-half the regular rate of pay for the hours worked by them for which Defendant did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this ____ day of December, 2017.

Respectfully submitted,

/s/ Carlos V. Leach

Carlos V. Leach, Esq.

Fla. Bar No.: 540021

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Attorneys for Plaintiff(s)

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.)

I. (a) PLAINTIFFS
NERLINE MICHEL, individually and on behalf of other similarly situated,

DEFENDANTS
VISTANA MANAGEMENT, INC., DBA SHERATON'S VISTANA RESORT, a Florida for Profit Corporation,

(b) County of Residence of First Listed Plaintiff Orange
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange
(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 Leach Firm, P.A.
1950 Lee Road, Suite 213 Winter Park, Florida 32789
(321) 287-6021

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input 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

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 <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <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	PERSONAL INJURY <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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <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 LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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"/> 893 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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated 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 U.S.C. § 206 and 29 U.S.C. § 216(b) (the "FLSA")

Brief description of cause:
Action for overtime compensation

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: 12/04/2017 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING 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: [Former Housekeeper's Lawsuit Demands Vistana Resort Clean Up its Pay Practices](#)
