

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

CASE NO.:

ANGELICA MIRA, 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, Angelica Mira (“Mira”), 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. Mira 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 October of 2013, Mira began working for Defendants as a waitress at their restaurant located at 1760 Sawgrass Mills Cir, Sunrise, FL 33323 (the "Restaurant").

8. During the time period from May 18, 2014 to the present (the "Collective Action Time Period"), Mira and those similarly situated employees, current and former, worked as waiters, waitresses, hostesses, hosts, busboys, bartenders, bar backs, cooks, dishwashers and/or runners for the Restaurant.

9. Plaintiff brings a collective action against her former employers for unpaid wages and overtime compensation owed to her 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.

10. This action also seeks compensation for Plaintiff and those similarly situated on the basis that the Defendants violated the Florida Minimum Wage Act, Fla. Stat. § 448.110 ("FMWA"), and under a theory of unjust enrichment under Florida law.

11. 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.

12. 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 Mira and the other FLSA Class Members were employed.

13. 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.

14. 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).

15. During the Collective Action Time Period, Defendants failed to pay Plaintiff and the other FLSA Class Members for all hours worked in violation of the FLSA.

16. 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.

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

18. 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.

19. 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.

20. 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.

21. Defendants have also denied Plaintiff and the other FLSA Class Members full compensation at the federally mandated minimum wage.

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

23. 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 mandated time-and-a-half overtime rate for the hours exceeding forty (40) in a workweek.

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

25. 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.

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

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

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

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

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

31. 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.

32. 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 minimum wage for all hours worked and overtime pay for all hours worked in excess of forty (40) in a workweek.

Conditions Precedent, Attorneys' Fees and Costs

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

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

COUNT I
VIOLATION OF FLSA
(Against Villagio, Billante and Kalas)

35. Plaintiff, individually and on behalf of all others similarly situated, realleges the allegations contained in paragraphs 1 through 34 above as though fully set forth herein.

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

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

38. For the entire length of Plaintiff's employment at the Restaurant she was never compensated for the time she spent working in excess of forty (40) hours per week in violation of the FLSA's minimum wage and overtime requirements.

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

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

41. By failing to compensate Mira, and the other FLSA Class Members, for the time they worked in excess of forty (40) hours per week (either at their regular rate or overtime rate), Defendants have willfully violated the provisions of the FLSA.

42. 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 Mira and those similarly situated.

43. 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.

44. 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.

45. 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).

46. 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).

47. 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.

48. 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 II
VIOLATION OF ARTICLE X, SECTION 24 OF THE FLORIDA CONSTITUTION
(Against Villagio)

49. Plaintiff realleges the allegations contained in paragraphs 1 through 34 above as though fully set forth herein.

50. This is an action against Defendant Villagio for willful violation of Article X, Section 24 of the Florida Constitution.

51. Defendant Villagio willfully failed to pay Plaintiff minimum wages for one or more weeks during Plaintiff's employment in contravention of Article X, Section 24 of the Florida Constitution.

52. Plaintiff has complied with the prerequisites under Fla. Stats. § 448.110 by serving the notice required pursuant to that statute to Defendant on or about February 14, 2017 (the "Notice").

53. More than fifteen (15) days have elapsed since Plaintiff's service of the Notice on Defendant.

54. Although more than fifteen (15) days have elapsed since service of the Notice Defendant has failed to make any payments to Plaintiff.

55. As a direct and proximate result of Defendant Villagio's deliberate underpayment of wages, Plaintiff has been damaged in the loss of minimum wages owed for one or more weeks of work for Defendant Villagio.

56. Plaintiff is entitled to an award of damages in an amount equal to the relevant Florida Minimum Wage, and an equal amount as liquidated damages.

57. Plaintiff is entitled to an award of reasonable attorneys' fees and costs, pursuant to Article X, Section 24 of the Florida Constitution.

58. Pursuant to § 448.110, Fla. Stat. and Article X, Section 24 of the Florida Constitution, Plaintiff is entitled to recover from Defendant Villagio:

- (a) the full amount of back wages unlawfully withheld;
- (b) an amount equal to the unpaid back wages as liquidated damages;
- (c) the costs of this action;
- (d) reasonable attorneys' fees; and
- (e) such legal or equitable relief as may be appropriate to remedy the violations.

COUNT III
QUANTUM MERUIT
(Against Villagio)

59. Plaintiff realleges the allegations contained in paragraphs 1-34, as though fully set forth herein.

60. This is an action for Quantum Meruit.

61. Plaintiff conferred a substantial benefit on Villagio in the form of provisioning waitress services to the Restaurant.

62. Villagio had actual knowledge of the services provided by Mira and the benefit conferred upon them as the result of receiving these services.

63. Villagio accepted and appreciated the services provided by Mira to the Restaurant.

64. Villagio has not paid Mira for all of the hours Mira worked at the Restaurant.

65. Under these circumstances, Villagio should be required to pay Mira the reasonable value of the services Mira provided to Villagio.

WHEREFORE, Mira, 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 regular and 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 II, for damages against Villagio including, without limitation, all unpaid regular and overtime wages that are due, an amount equal to the unpaid wages as liquidated damages, prejudgment interest, the costs of this action and reasonable attorneys' fees, and such legal and equitable relief as appropriate to remedy the violations;

III. 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

IV. On all Counts, for such other and further relief as may be available to Mira 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: May 18, 2017.

Respectfully submitted,

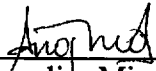
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By: */s/ Peter Joseph Mathews*
MICHAEL JAMES COREY
Florida Bar No. 43598
PETER JOSEPH MATHEWS
Florida Bar No. 94675

CONSENT TO BECOME PARTY PLAINTIFF

I, Angelica Mira, 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.



Angelica Mira

05-18-2017

Date

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

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.) NOTICE: Attorneys MUST indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS MIRA, ANGELICA and all others similarly situated under 29 USC 216(b)

DEFENDANTS Villagio of Sawgrass, Inc., Thomas Billante, and Kosmos Kalas

(b) County of Residence of First Listed Plaintiff Broward, FL (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) Peter J. Mathews, Esq. Obront Corey, PLLC, (305) 373-1040 100 S. Biscayne Blvd., #800, Miami, FL 33131

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 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)

- Citizen of This State PTF DEF
Citizen of Another State PTF DEF
Citizen or Subject of a Foreign Country PTF DEF

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

- CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, etc.
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, etc.
TORTS: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury, etc.
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, etc.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, etc.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), etc.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729 (a)), etc.
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC 7609
CIVIL RIGHTS: 440 Other Civil Rights, 441 Voting, 442 Employment, etc.
PRISONER PETITIONS: 463 Alien Detainee, 510 Motions to Vacate Sentence, etc.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions

V. ORIGIN

- 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 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions): a) Re-filed Case YES NO b) Related Cases YES 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 USC SS. 201-216; Overtime and wage violations

LENGTH OF TRIAL via 3-5 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 \$ CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

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

DATE May 19, 2017

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Villagio Restaurant Hit with FLSA Allegations](#)
