

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BRITT RISH, on behalf of himself
and others similarly situated

Plaintiff,

v.

CASE NO.:

TARPON TURTLE GRILL & MARINA, LLC,
and ERIC WEBBER,

Defendants.

WAGE THEFT COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, BRITT RISH (“Plaintiff”), on behalf of himself and others similarly situated, hereby sues the Defendants, TARPON TURTLE GRILL & MARINA, LLC and ERIC WEBBER (“Defendants”), and alleges as follows:

JURISDICTION, VENUE AND PARTIES

1. This is an action brought under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (“FLSA”). Accordingly, this Court has subject-matter jurisdiction.

2. Venue is proper within the Middle District of Florida because a substantial part of the events giving rise to this claim arose here.

3. At all times material, Plaintiff was/is a resident of Pinellas County, Florida.

4. At all times material, Defendant, TARPON TURTLE GRILL & MARINA, LLC, was/is a Florida Limited Liability Company authorized to conduct business in

the State of Florida, with its principal place of business at 1513 Lake Tarpon Ave, Tarpon Springs, FL 34688.

5. Defendant Webber is the Owner, Managing Member and head chef of TARPON TURTLE GRILL & MARINA, LLC. In that position, Webber exercises significant control over the company's operations, has the power to hire and fire employees, the power to determine salaries, the responsibility to maintain employment records and has operational control over significant aspects of the company's day-to-day functions. **GENERAL ALLEGATIONS**

6. Defendants are an employer as defined by the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b), *et seq.* ("FLSA").

7. At all material times, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

8. During at least one of the relevant years, Defendants had an annual dollar volume of sales or business of at least \$500,000.

9. Plaintiff was employed by Defendants from April 2015 through March 2017 as an assistant manager and server.

10. While employed by Defendants, Plaintiff engaged in commerce or in the production of goods for commerce.

11. This action is brought under the FLSA to recover unpaid overtime compensation owed to Plaintiff.

12. Plaintiff was an employee of Defendants under the FLSA.

13. Defendants failed to comply with the FLSA because Plaintiff regularly

required to work in excess of forty (40) hours a workweek but was not paid overtime compensation as required by the FLSA.

14. Defendants failed to keep accurate time records as required by the FLSA. Accordingly, Plaintiff is required to provide only a reasonable approximation of the number of overtime hours worked for which compensation is owed, which is presumed correct. The burden then shifts to the Defendant to overcome this presumption. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946).

15. Defendants' violations of the FLSA was knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

16. Plaintiff has been required to retain the undersigned counsel to represent him in this action and is obligated to pay them a reasonable fee for their services.

17. During his employment, Plaintiff complained to management, objecting to Defendant's failure to properly pay overtime compensation.

18. After Plaintiff objected to the unlawful pay practices, Defendant terminated Plaintiff's employment in retaliation for his protected activity under the FLSA.

COUNT I
OVERTIME – FLSA

19. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 18 as if fully restated herein.

20. During the three (3) year period prior to filing this action, Defendants failed to pay Plaintiff overtime compensation for hours worked over forty (40) in a

workweek.

21. Defendants' failure to pay Plaintiff overtime compensation for hours worked over forty (40) in any workweek constitutes a violation of the FLSA, 29 U.S.C. § 207.

22. Defendants' violations of the FLSA were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

WHEREFORE, Plaintiff respectfully requests this Court issue an Order awarding damages in the amount of the unpaid overtime compensation owed, awarding liquidated damages pursuant to 29 U.S.C. § 216(b), awarding reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), and awarding all such other relief as the Court deems just and appropriate.

COUNT II
RETALIATION – FLSA

23. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 18 as if fully restated herein.

24. Section 15(a)(3) of the FLSA states that it is a violation for any person to "discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding...."

25. By complaining to management about Defendant's unlawful pay practices which were violative of the FLSA, Plaintiff engaged in an activity protected by the FLSA.

26. By being discharged, Plaintiff suffered an adverse action by Defendant immediately subsequent to his protected activity.

27. Plaintiff's termination was directly caused by, and was a result of, his protected activity.

28. By discharging Plaintiff because of his statutorily protected activity, Defendant engaged in unlawful retaliation in violation of 29 U.S.C. § 215(a).

29. Plaintiff has suffered damages including lost wages, lost benefits, emotional distress, anguish, interest and attorney's fees and costs.

WHEREFORE, Plaintiff demands judgment against Defendant and relief in the form of:

- (i) Economic damages, including lost wages, benefits, and other remuneration;
- (ii) Reinstatement of full fringe benefits;
- (iii) Front and back pay;
- (iv) Liquidated damages;
- (v) Any other compensatory damages allowable under the law;
- (vi) Attorneys' fees and costs pursuant to the FLSA;
- (vii) Emotional distress damages;
- (viii) Punitive damages;
- (ix) Prejudgment and post-judgment interest; and
- (x) Any other relief the Court deems appropriate.

WHEREFORE, Plaintiff demands judgment against Defendant for any and all

damages, interest, costs, and such further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands trial by jury as to all issues.

DATED this 5th day of June, 2017.

Respectfully submitted,
WHITTEL & MELTON, LLC

/s/ Jay P. Lechner

Jay P. Lechner, Esq.

Florida Bar No.: 0504351

Jason M. Melton, Esq.

Florida Bar No.: 605034

One Progress Plaza

200 Central Avenue, #400

St. Petersburg, Florida 33701

Telephone: (727) 822-1111

Facsimile: (727) 898-2001

Service Email:

Pleadings@theFLlawfirm.com

lechnej@theFLlawfirm.com

kmoran@theFLlawfirm.com

Attorneys for Plaintiffs

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

BRITT RISH, on behalf of himself and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Jay P. Lechner, Esq., c/o Whittel & Melton, LLC 200 Central Ave., Suite 400, St. Petersburg, FL 33701 727-822-1111

DEFENDANTS

TARPON TURTLE GRILL & MARINA, LLC, and ERIC WEBBER

County of Residence of First Listed Defendant Pinellas County (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, 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, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 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): Fair Labor Standards Act. Brief description of cause: FLSA Violation

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 07/13/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Jay P. Lechner, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING 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.Cv.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; **NOTE: 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 clerk(s) 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 six 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.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 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.
- VI. 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
- VII. 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 actual dollar amount 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.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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: [Tarpon Turtle Grill and Marina Sued Over Allegedly Illegal Pay Practices](#)
