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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

6:18-CV-1417-ORL-31-KRS

RAMON RODRIGUEZ, and all others similarly
situated under 29 U.S.C 206(B),

Plaintiff,

v.

CITY BUFFET, INC.,
a Florida Corporation,
BIN XING LI, individually and
NAI R. LI, individually

Defendants.

COMPLAINT

Plaintiff, Ramon Rodriguez (“Rodriguez”), on behalf of himself, and others similarly situated, under the provisions of the Fair Labor Standard Act (“FLSA”) of 1938, as amended, 29 U.S.C. § 216(b), files this Complaint against Defendants, City Buffet, Inc d/b/a Buffet City (“Buffet City”), Bin Xing Li (“Bin”) and Nai R. Li (“Nai”), and alleges, as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(4), because these claims seek redress for violations of Plaintiff’s federal civil and statutory rights.
2. At all material times, Buffet City is, and was, a Florida corporation, authorized to conduct and conducting business in Osceola County, Florida.
3. At all material times, Bin is *sui juris* and a resident of Osceola County, Florida.

4. At all material times, Nai is *sui juris* and a resident of Osceola County, Florida

5. At all material times, Rodriguez, is *sui juris* and a resident of Osceola County, Florida.

6. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) as a substantial part of the events or omissions giving rise to the claims that occurred in this judicial district.

7. This action is brought by Plaintiff to recover from the Employer unpaid overtime and minimum wage compensation, as well as an additional amount as liquidated damages, costs and reasonable attorney's fees pursuant to the FLSA, §§ 206, 207.

8. Upon information and belief, the annual gross revenue of Buffet City was at all times material hereto in excess of \$500,000.00 per annum.

9. At all material times hereto, Buffet City was and continues to be an enterprise engaged in interstate commerce.

10. At all material times hereto, Buffet City operated as an organization which purchased equipment and products manufactured outside the state of Florida; provided services to or sold, marketed, or handled goods and materials to customers throughout the United States; provided services for goods sold and transported from across state lines; obtained, solicited, and accepted funds from sources outside the state of Florida; used telephonic transmissions traversing state lines in the ordinary course of business; transmitted funds outside the state of Florida; and otherwise regularly engaged in interstate commerce.

11. As a result of the services provided by Buffet City, two or more of its employees regularly handled and worked with goods and materials moved in or produced in interstate commerce.

12. By reason of the foregoing, Buffet City is and was, during all times material hereto, an enterprise engaged in commerce or in the production of goods for commerce as defined by the FLSA, 29 U.S.C. §§ 203(r)-(s), and Plaintiff is within interstate commerce.

13. Plaintiff and those similarly situated employees regularly utilized and handled materials, equipment and goods manufactured and purchased from outside the state of Florida and regularly used the instrumentalities of interstate commerce in their world.

14. Upon information and belief, Bin is an officer/director of Buffet City and has economic and day-to-day control of Buffet City, and of the nature and structure of Plaintiff's employment relationship with Buffet City, and is therefore an employer as defined by 29 U.S.C., Section 203 (d).

15. Upon information and belief, Nai is an officer/director of Buffet City and has economic and day-to-day control of Buffet City, and of the nature and structure of Plaintiff's employment relationship with Buffet City, and is therefore an employer as defined by 29 U.S.C., Section 203 (d).

GENERAL ALLEGATIONS

16. Upon information and belief, Employer employed Plaintiff from approximately January 2014 through February, 2016 ("the relevant time period").

17. During the relevant time period, Plaintiff was employed as a non-exempt Hibachi Chef earning an average of \$1,800.00 per month.

18. At all material times, Buffet City's gross annual revenues were in excess of \$500,00.00

19. Throughout his employment with Buffet City, Plaintiff routinely worked for Buffet City from Monday through Saturday, twelve (12) hours per day, for a total of seventy-two 72 per week, forty (40) regular hours and thirty-two (32) overtime.

20. Plaintiff worked a total of 288 hours per month, and was paid \$1,800.00 dollars a month, or an average of \$6.25 per hour.

21. Upon information and belief, Bin and Nai are officers/directors of Buffet City and have economic control of Buffet City, and of the nature and structure of Plaintiff's employment relationship with Buffet City.

22. Notwithstanding, Buffet City, Bin and Nai willfully and intentionally failed/refused to pay to Plaintiff the federally required minimum and overtime rates for all hours he worked.

23. Buffet City, Bin and Nai knew of the overtime requirements of the FLSA and willfully/intentionally/recklessly failed to investigate whether their payroll practices were in accordance with the FLSA.

24. As a result, Plaintiff has suffered damages and is entitled to receive overtime and minimum wage compensation.

25. Plaintiff has complied with all conditions precedent to filing this action.

26. Plaintiff had retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorney's fee.

PRE-SUIT DEMAND

27. On June 13, 2018, Plaintiff through his undersigned counsel, sent to Buffet City a written pre-suit demand regarding the violations of the overtime provisions of the FLSA, and requesting Employer pay the amounts owed to Plaintiff, but Buffet City failed/refused to do so ("Demand"). A copy of the Demand is attached as "Exhibit A".

**COUNT I -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST BUFFET CITY**

28. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

29. This is an action against Buffet City for overtime compensation pursuant to 29 U.S.C. § 216(B).

30. Upon information and belief, Buffet City has employed and currently employs several other similarly situated employees, like Plaintiff, who have not been paid overtime for work performed in excess of forty (40) hours weekly, within three (3) years from the filing of this Complaint.

31. Plaintiff routinely worked in excess of forty (40) hours per week for Buffet City.

32. Specifically, Plaintiff estimates that he worked for Buffet City from Monday through Saturday (6 days per week), for an average of 12 hours per day, for a total of 72 hours a week, forty (40) regular and thirty-two (32) overtime.

33. Plaintiff was a non-exempt employee, entitled to be paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

34. Buffet City knew or should have known that Plaintiff suffered or was permitted to work overtime for Buffet City as defined in 29 U.S.C. § 203 (g).

35. Buffet City failed and/or refused to compensate Plaintiff for such work in excess of forty (40) hours at rates no less than one and one-half times the regular rates, for which he was employed, contrary to the provisions of 29 U.S.C. § 207 (a).

36. At all material times, Buffet City knew or should have known that such refusal and/or failure is prohibited by the FLSA.

37. Notwithstanding, Buffet City intentionally and willfully violated the FLSA, as cited herein.

38. At all material times, Buffet City failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

39. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

**COUNT II -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST BIN**

40. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

41. This is a collective action against Bin for overtime compensation pursuant to 29 U.S.C. § 216(B).

42. Upon information and belief, Bin has employed and currently employs several other similarly situated employees, like Plaintiff, who have not been paid overtime for work performed in excess of forty (40) hours weekly, within three (3) years from the filing of this Complaint.

43. Plaintiff routinely worked in excess of forty (40) hours per week for Bin.

44. Specifically, Plaintiff estimates that he worked for Buffet City from Monday through Saturday, for an average of 12 hours per day, for a total of 72 hours a week, forty (40) regular and thirty-two (32) overtime.

45. Defendant, Bin, had day-to-day and operational control of Plaintiff and his compensation structure and is therefore an employer pursuant to 29 U.S.C. § 203(d).

46. Plaintiff was a non-exempt employee, entitled to be paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

47. Bin knew or should have known that Plaintiff suffered or was permitted to work overtime for Buffet City as defined in 29 U.S.C. § 203 (g).

48. Bin failed and/or refused to compensate Plaintiff for such work in excess of forty (40) hours at rates no less than one and one-half times the regular rates for which he was employed, contrary to the provisions of 29 U.S.C. § 207 (a).

49. At all material times, Bin knew or should have known that such refusal and/or failure is prohibited by the FLSA.

50. Notwithstanding, Bin intentionally and willfully violated the FLSA as cited herein.

51. At all material times, Bin failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

52. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

**COUNT III -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST NAI**

53. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

54. This is a collective action against Nai for overtime compensation pursuant to 29 U.S.C. § 216(B).

55. Upon information and belief, Nai has employed and currently employs several other similarly situated employees, like Plaintiff, who have not been paid overtime for work performed in excess of forty (40) hours weekly, within three (3) years from the filing of this Complaint.

56. Plaintiff routinely worked in excess of forty (40) hours per week for Nai.

57. Specifically, Plaintiff estimates that he worked for Buffet City from Monday through Saturday, for an average of 12 hours per day, for a total of 72 hours a week, forty (40) regular and thirty-two (32) overtime.

58. Defendant, Nai, had day-to-day and operational control of Plaintiff and his compensation structure and is therefore an employer pursuant to 29 U.S.C. § 203(d).

59. Plaintiff was a non-exempt employee, entitled to be paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

60. Nai knew or should have known that Plaintiff suffered or was permitted to work overtime for Buffet City as defined in 29 U.S.C. § 203 (g).

61. Nai failed and/or refused to compensate Plaintiff for such work in excess of forty (40) hours at rates no less than one and one-half times the regular rates for which he was employed, contrary to the provisions of 29 U.S.C. § 207 (a).

62. At all material times, Nai knew or should have known that such refusal and/or failure is prohibited by the FLSA.

63. Notwithstanding, Nai intentionally and willfully violated the FLSA as cited herein.

64. At all material times, Nai failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

65. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

**COUNT IV -
MINIMUM WAGE VIOLATIONS AGAINST BUFFET CITY**

66. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

67. The FLSA requires that Buffet City pay Plaintiff a required minimum wage per hour, 29 U.S.C. § 206(a). The FLSA requires that Buffet City, have a regular pay period and make reasonably prompt payments in issuing pay for the work performed in the pay period. The failure to “promptly pay” minimum wages due to Plaintiff constitutes a minimum wage violation under

the FLSA. *Olson v. Superior Pontiac-GMC, Inc.*, 765 F.2d 1570, 1579 (11th Cir. 1985), modified 77 F.2d 265 (11th Cir. 1985); see also *Biggs v. Wilson*, 1 F.3d 1537, 1530-40 (9th Cir. 1993).

68. Buffet City knew of and showed reckless disregard for the provisions of the FLSA because Buffet City knew or should have known that Plaintiff's wages did not amount to a lawful minimum wage considering his 72 hours worked each week.

69. Buffet City willfully and intentionally failed to pay Plaintiff and those similarly-situated employees their full minimum wages by making the conscious decision to pay Plaintiff a salary which failed to compensate Plaintiff at the applicable minimum wage.

70. Buffet City did not have a reasonable objective belief that it was not required to pay Plaintiff's minimum wages.

71. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

COUNT V
MINIMUM WAGE VIOLATION AGAINST BIN

72. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

73. The FLSA requires employer to pay Plaintiff a required minimum wage per hour, 29 U.S.C. § 206(a).

74. The FLSA requires employer to have a regular pay period and make reasonably prompt payments in issuing pay for the work performed in the pay period. The failure to "promptly pay" minimum wages due to Plaintiff constitutes a minimum wage violation under the FLSA. *Olson v. Superior Pontiac-GMC, Inc.*, 765 F.2d 1570, 1579 (11th Cir. 1985), modified 77 F.2d 265 (11th Cir. 1985); see also *Biggs v. Wilson*, 1 F.3d 1537, 1530-40 (9th Cir. 1993).

75. Bin knew of and showed reckless disregard for the provisions of the FLSA

because Bin knew or should have known that Plaintiff's wages did not amount to a lawful minimum wage considering his 72 hours worked each week.

76. Bin willfully and intentionally failed to pay Plaintiff and those similarly-situated employees their full minimum wages by making the conscious decision to pay Plaintiff a salary which failed to compensate Plaintiff at the applicable minimum wage wages for all of Plaintiff's hours worked per week.

77. Bin did not have a reasonable objective belief that it was not required to pay Plaintiff's minimum wages.

78. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

COUNT VI
MINIMUM WAGE VIOLATION AGAINST NAI

79. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-seven (27) above.

73. The FLSA requires employer to pay Plaintiff a required minimum wage per hour, 29 U.S.C. § 206(a).

74. The FLSA requires employer to have a regular pay period and make reasonably prompt payments in issuing pay for the work performed in the pay period. The failure to "promptly pay" minimum wages due to Plaintiff constitutes a minimum wage violation under the FLSA. *Olson v. Superior Pontiac-GMC, Inc.*, 765 F.2d 1570, 1579 (11th Cir. 1985), modified 77 F.2d 265 (11th Cir. 1985); see also *Biggs v. Wilson*, 1 F.3d 1537, 1530-40 (9th Cir. 1993).

75. Nai knew of and showed reckless disregard for the provisions of the FLSA because Nai knew or should have known that Plaintiff's wages did not amount to a lawful minimum wage considering his 72 hours worked each week.

76. Nai willfully and intentionally failed to pay Plaintiff and those similarly-situated employees their full minimum wages by making the conscious decision to pay Plaintiff a salary which failed to compensate Plaintiff at the applicable minimum wage wages for all of Plaintiff's hours worked per week.

77. Nai did not have a reasonable objective belief that it was not required to pay Plaintiff's minimum wages.

78. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

PLAINTIFF'S DEMAND FOR JURY TRIAL

79. Plaintiff hereby demands a jury trial of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Ramon Rodriguez, respectfully requests that judgment be entered in his favor against Defendants, Buffet City, Bin and Nai, as follows:

(a) Declaring pursuant to 29 U.S.C. § 206(a), 28 U.S.C §2201 and §2202, that the acts and practices of the Defendants complained of herein are in violation of the minimum and overtime wages provisions of the FLSA;

(b) Permanently enjoining the Defendants, their agents, officers and employees from engaging in all practices found by this court to be in violation of the minimum and overtime wages provisions of the FLSA;

(c) Awarding Plaintiff damages against Defendants, for lost and withheld compensation, minimum wages, and overtime wages compensation for all hours that he worked for Defendants over forty (40) hours per week, but for which he was not compensated at the required minimum and overtime rate;

- (d) Awarding Plaintiff liquidated damages;
- (e) Awarding Plaintiff reasonable attorney's fees, costs, interest, and expenses of this litigation pursuant to 29 U.S.C. §216(b);
- (f) Ordering any other further relief that this Court may deem just and proper.

Respectfully submitted this 27th day of August, 2018.

By: /s/ Monica Espino
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Counsel for Plaintiff

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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 RELEVANT CASES BELOW.

I. (a) PLAINTIFFS Ramon Rodriguez

DEFENDANTS City Buffet, Inc.; Bin Xing Li and Nai R. Li

(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) Espino Law, PL - 2655 S. LeJeune Road, Suite 802 Coral Gables, FL 33134

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)

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

- 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)

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

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

Click here for: Nature of Suit Code Descriptions

CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Insurance, Personal Injury, Real Property, Civil Rights, Prisoner Petitions, Labor, and Federal Tax Suits with checkboxes for various codes.

V. ORIGIN (Place an "X" in One Box Only) 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 29 U.S.C. § 216(b) LENGTH OF TRIAL via 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 August 22, 2018 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFF 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: [Florida Eatery Buffet City Sued by Ex-Chef Alleging Minimum Wage, OT Violations](#)
