

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

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

Plaintiff,

v.

EAMON GUILFOYLE, individually

Defendant.

_____ /

COMPLAINT

Plaintiff, Arsenio 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 Defendant **EAMON GUILFOYLE** (“Guilfoyle”), 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, Guilfoyle is, and was, a resident of Miami, Miami Dade County and operated a business under the Fictitious Name of Playwright Irish Pub.

3. The Fictitious Name of Playwright Irish Pub is registered with the Florida Division of Corporations as a Fictitious Name and reflects Eamon Guilfoyle as the owner.

4. Guilfoyle employed Rodriguez as a Busser at Playwright Irish Pub located in Miami Beach, Florida.

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

6. Venue is proper in the Southern 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 Guilfoyle was at all times material hereto in excess of \$500,000.00 per annum.

9. At all material times hereto, Guilfoyle operates Playwright Irish Pub as an enterprise that was, and continues to be, engaged in interstate commerce.

10. At all material times hereto, Guilfoyle operated Playwright Irish Pub 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 Guilfoyle, two or more of his employees regularly handled and worked with goods and materials moved in or produced in interstate commerce.

12. By reason of the foregoing, Guilfoyle is and was, during all times material hereto, 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. Guilfoyle has economic and day-to-day control of the business known as Playwright Irish Pub, and of the nature and structure of Plaintiff's employment relationship with Guilfoyle, and is therefore an employer as defined by 29 U.S.C., Section 203 (d).

GENERAL ALLEGATIONS

15. Upon information and belief, Employer employed Plaintiff from approximately January 25, 2013 through June, 2018 ("the relevant time period").

16. During the relevant time period, Plaintiff was employed as a non-exempt Busser earning an average of \$425, plus tips, per month.

17. At all material times, Guilfoyle's gross annual revenues were in excess of \$500,00.00

18. Throughout his employment with Guilfoyle, Plaintiff routinely worked for Guilfoyle on Monday, Tuesday, Friday and Saturday, twelve (12) hours per day, for a total of forty-eight (48) hours per week, forty (40) regular hours and eight (8) hours overtime.

19. Plaintiff worked approximately 207.84 hours per month, and was paid \$425.00 dollars a month, or an average of \$2.04 per hour.

20. Upon information and belief, Guilfoyle has economic control of the business, and of the nature and structure of Plaintiff's employment relationship with Guilfoyle.

21. Notwithstanding, Guilfoyle, willfully and intentionally failed/refused to pay to Plaintiff the federally required minimum and overtime rates for all hours he worked.

22. Guilfoyle 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.

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

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

25. 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

26. On August 23, 2018, Plaintiff through his undersigned counsel, sent to Guilfoyle 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 Guilfoyle failed/refused to do so ("Demand").

COUNT I **VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA**

27. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24) above.

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

29. Upon information and belief, Guilfoyle 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.

30. Plaintiff routinely worked in excess of forty (40) hours per week for Guilfoyle.

31. Specifically, Plaintiff estimates that he worked for Guilfoyle on Monday, Tuesday, Friday and Saturday, twelve (12) hours per day, for a total of forty-eight (48) hours per week, forty (40) regular hours and eight (8) hours overtime.

32. 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.

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

34. Guilfoyle 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).

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

36. Notwithstanding, Guilfoyle intentionally and willfully violated the FLSA, as cited herein.

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

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

COUNT II
MINIMUM WAGE VIOLATIONS (PROMPT PAYMENT)

39. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24)

above.

40. The FLSA requires that Guilfoyle pay Plaintiff a required minimum wage per hour, ;. The FLSA requires that Guilfoyle, 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).

41. Guilfoyle knew of and showed reckless disregard for the provisions of the FLSA because Guilfoyle knew or should have known that Plaintiff’s wages did not amount to a lawful minimum wage considering his 48 hours worked each week.

42. Guilfoyle 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. Guilfoyle also failed to timely pay any of Plaintiff’s last *four* months of pay which remain outstanding since March, 2018.

43. Guilfoyle did not have a reasonable objective belief that he was not required to pay Plaintiff’s minimum wages.

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

COUNT III
VIOLATION OF FLSA MISCLASSIFICATION OF EMPLOYEE

45. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24) above.

46. Although Plaintiff and other similarly situated employees were designated as independent contractors by Defendant, in fact they were employees.

47. Pursuant to FLSA, employers must appropriately classify and compensate all employees.

48. Plaintiff, and all others similarly situated, were dependent on Defendant's business, and were permanent employees who served Defendants' business.

49. Plaintiff, and all others similarly situated, are unequivocally entitled to all legal benefits and protections provided to employees under federal law and the FLSA, including but not limited to, minimum wages, overtime at the rate of 1 and ½ his/her regular rate, etc., that he and others, did not receive due to the willful misclassification from.

COUNT IV
VIOLATION OF §443.11, FLORIDA STATUTES
MISCLASSIFICATION OF EMPLOYEE

50. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24) above.

51. Although Plaintiffs and other similarly situated employees were designated as independent contractors by Defendants, in fact they were employees.

52. Pursuant to FLSA, employers must appropriately classify and compensate all employees.

53. Plaintiff, and all others similarly situated, were dependent on Defendants' business, and were permanent employees who served Defendants' business.

54. Plaintiff, and all others similarly situated, are unequivocally entitled to all legal benefits and protections, as employees under Florida law, including but not limited to, worker's compensation benefits, re-employment assistance, etc., that he and others did not receive due to Defendants' willful misclassification.

PLAINTIFF'S DEMAND FOR JURY TRIAL

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

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, Arsenio Rodriguez, respectfully requests that judgment be entered in his favor against Defendant, Guilfoyle, 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 5th day of September, 2018.

By: /s/ Henry Hernandez
Florida Bar No. 542601

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