

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

CASE NO.:

DIMITRI BIENNECAR, RANDY SAGET,  
and all others similarly situated under 29 U.S.C.  
216(B),

Plaintiffs,

v.

F5 PRODUCTIONS INC., a Florida  
Corporation, d/b/a McKENNA'S PLACE,

Defendant.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs, DIMITRI BIENNECAR and RANDY SAGET, ("Plaintiffs") on behalf of themselves and all others similarly situated under 29 U.S.C. 216(B), through undersigned counsel, file this Complaint against Defendant, F5 PRODUCTIONS INC., a Florida Corporation, doing business as McKENNA'S PLACE ("Defendant") and allege as follows:

**INTRODUCTION**

1. This is an action by Plaintiffs against Defendant, their former employer, for unpaid overtime pursuant to the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 201 et seq. Plaintiffs seek damages and reasonable attorney's fees, together with other relief.

**JURISDICTION**

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because this case arises under the Fair Labor Standards Act 29 U.S.C. §§ 201-216 ("FLSA").

3. Venue is proper in the Southern District of Florida, pursuant 28 U.S.C. § 1391(b) because the claims arose here and the Defendant is subject to personal jurisdiction here.

**THE PARTIES**

4. Plaintiffs, DIMITRI BIENNESEAR (“BIENNESEAR”) and RANDY SAGET (“SAGET”) are citizens and residents of Palm Beach County, Florida.

5. Defendant, F5 PRODUCTIONS INC. is a Florida Corporation formed and existing under the laws of the State of Florida and at all times during Plaintiffs’ employment, was an employer as defined by 29 U.S.C. §203 and was doing business as MCKENNA’S PLACE.

6. MCKENNA’S PLACE was a restaurant, owned and operated by Defendant at 4068 Forest Hills Boulevard, in Palm Springs, Florida.

7. At all material times relevant to this action (August 2015 - present), Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and §203(s).

8. At all material times relevant to this action (August 2015 - present), Defendant, made gross earnings of at least \$500,000.00 annually.

9. At all material times relevant to this action (August 2015 - present), Defendant, had two or more employees engaged in interstate commerce, producing goods for commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce.

10. At all material times relevant to this action (August 2015 - present), Defendant had two or more employees who routinely ordered materials or supplies from out of state vendors.

11. At all material times relevant to this action (August 2015 - present), Defendant had two or more employees who used the telephone and/or computers to place and accept business calls with out of state customers on a daily basis in the normal course of its business.

12. Plaintiffs, BIENNESEAR and SAGET have been employed by Defendant since before August 2015. During their entire employment with Defendant they have been individually

engaged in commerce as defined by 29 U.S.C. §§206(a) and 207(a)(1).

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

14. All of Defendant's actions alleged in this Complaint occurred in Florida.

**GENERAL FACTUAL ALLEGATIONS PERTAINING TO PLAINTIFFS**

15. Plaintiff BIENNECAR was employed by Defendant as a dishwasher at McKenna's Place from August 2015 until May 2018.

16. Plaintiff SAGET was employed by Defendant as a cook at McKenna's Place from October 2015 until April 2018.

17. During their employment with Defendant both Plaintiffs customarily worked in excess of forty (40) hour per week.

18. Defendant failed to compensate Plaintiffs at the rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours per week.

19. During their employment with Defendant Plaintiffs worked an average of approximately SIXTY (60) hours per week.

20. Plaintiffs have retained THE ELSTEIN LAW FIRM and THE LAW OFFICES OF NEIL D. KODSI to represent them in this matter and have agreed to pay these law firms a reasonable fee for their services.

**COUNT I - FLSA OVERTIME WAGE VIOLATION**

21. Plaintiffs reallege and incorporate paragraphs 1 through 20, as if fully set forth herein.

22. Throughout Plaintiffs' employment, Defendant repeatedly and willfully violated Section 7 and Section 15 of FLSA by failing to compensate Plaintiffs at a rate not less than one

and one-half times the regular rate at which they were employed for workweeks longer than forty (40) hours.

23. Defendant did not act in good faith or reliance upon any of the following in formulating its decision to improperly compensate Plaintiffs their appropriate overtime rate for hours worked in excess of forty (40) hours per week: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

WHEREFORE, Plaintiffs demand a judgment against Defendant for the following:

- (a) Unpaid overtime wages found to be due and owing;
- (b) An additional equal amount equal to the overtime wages found to be due and owing as liquidated damages;
- (c) Prejudgment interest in the event liquidated damages are not awarded;
- (d) A reasonable attorney's fee and costs; and
- (e) Such other relief as the Court deems just and equitable.

**COUNT II – VIOLATION OF 29 U.S.C. §216(b)**  
**STATUTORY COLLECTIVE ACTION FOR FAILURE TO PAY OVERTIME**

24. Plaintiffs reallege and incorporate paragraphs 1 through 23, as if fully set forth herein.

25. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendant has employed several other similarly situated employees like Plaintiffs who have not been paid overtime for work performed in excess of 40 hours weekly from the filing of this complaint back three years.

26. Plaintiffs bring this count on behalf of themselves and other employees and former employees of Defendant similarly situated for overtime compensation and other relief pursuant to

the FLSA.

27. Plaintiffs have executed the appropriate Notices of Consent to Join, which are attached hereto as Exhibit A and incorporated herewith.

28. The additional persons who may become Plaintiffs in the action are nonexempt employees of Defendant who worked and, in some instances, continue to work in excess of forty (40) hours during a work week and who were not paid one and one-half times their regular rates of pay for the hours they worked in excess of forty hours as mandated by 29 U.S.C. §207.

29. At all times material hereto, Defendant failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiffs by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees as if they were exempt from coverage under 29 U.S.C. §§201 through 219, disregarding the fact that they were not exempt.

30. Based upon information and belief, the employees and former employees of Defendant similarly situated to Plaintiffs were paid straight time and expected to work in excess of forty (40) hours per week without being paid at the rate of one and one-half times their regular rates of pay for those hours exceeding forty (40) hours per week.

31. Records, if any, concerning the actual number of hours worked by Defendant's employees and former employees and the actual compensation paid to Defendant's employees and former employees similarly situated to Plaintiffs are in the possession, custody and control of Defendant.

32. All similarly situated employees are owed their overtime rates for each overtime hour that they worked, but were not paid at the statutory rate of one and one-half times their regular rates of pay.

33. Due to the intentional, willful and unlawful acts of Defendant, all similarly situated

employees have suffered damages and will continue to suffer damages and incur attorney's fees and costs.

34. As a direct and proximate result of Defendant's willful disregard of the FLSA, all similarly situated employees are entitled to liquidated damages in an equal amount to the amount by which each similarly situated employee or former employee has been damaged.

WHEREFORE, those similarly situated employees and former employees who have or will opt into this action demand that judgment be entered against Defendant:

- a. Declaring, pursuant to 29 U.S.C. §207, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiffs overtime compensation due them for hours worked by them but for which they have not been properly compensated.
- c. Awarding Plaintiffs liquidated damages;
- d. Awarding Plaintiffs reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b).
- e. Awarding Plaintiffs pre-judgment interest; and
- f. Ordering any other further relief the Court deems just and proper.

#### **DEMAND FOR JURY TRIAL**

Pursuant to the provisions of Rule 38(b) of the Federal Rules of Civil Procedure, PLAINTIFF demands a trial by jury on all issues so triable in this matter.

DATED: August 22, 2018

*/s/ Neil D. Kodsi*  
NEIL D. KODSI, ESQUIRE  
Florida Bar No. 0011255  
Email: [nkodsi@ndkodsilaw.com](mailto:nkodsi@ndkodsilaw.com)  
THE LAW OFFICES OF NEIL D. KODSI

1666 J.F. Kennedy Causeway, Suite 420  
North Bay Village, FL 33141  
Telephone: (786) 464-0841  
Facsimile: 954-790-6722  
***Co-Counsel for Plaintiffs***

***and***

/s/ Michael S. Elstein  
MICHAEL S. ELSTEIN, ESQUIRE  
Florida Bar No.  
Email: [michael@elsteinlaw.com](mailto:michael@elsteinlaw.com)  
ELSTEIN LAW FIRM  
8401 Lake Worth Road, Suite 107  
Wellington, Florida 33467  
Telephone: 954.928.0990  
Facsimile: 954.491.4555  
***Co-Counsel 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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS DIMITRI BIENNESCAR, RANDY SAGET, and others similarly situated under 29 U.S.C. 216(B) DEFENDANTS F5 PRODUCTIONS INC., a Florida Corporation, d/b/a McKENNA'S PLACE

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Neil D. Kodsi, The Law Offices of Neil D. Kodsi, 1666 J.F. Kennedy Causeway, Suite 420, North Bay Village, FL 33141

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
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)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, 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 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

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 U.S.C. §203 (Unpaid overtime); 29 USC §216(b) (FLSA Collective Action)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$100,000.00 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 [Signature]

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DIMITRI BIENNECAR, RANDY SAGET, and all others similarly situated under 29 U.S.C. 216(B),

Plaintiff(s)

v.

F5 PRODUCTIONS INC., a Florida Corporation, d/b/a McKENNA'S PLACE

Defendant(s)

Civil Action No. 9:18-cv-81126

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) F5 PRODUCTIONS INC. d/b/a McKENNA'S PLACE BY SERVICE UPON ITS REGISTERED AGENT, JEREMY LEVY 5821 VIA DE LA PLATA CIRCLE DELRAY BEACH, FL 33484

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

NEIL D. KODSI, ESQ. THE LAW OFFICES OF NEIL D. KODSI 1666 J.F. Kennedy Causeway, Suite 420 North Bay Village, FL 33141 Telephone: (786) 464-0841

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# EXHIBIT A

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

CASE NO.:

DIMITRI BIENNESCAR, RANDY SAGET,  
and all others similarly situated under 29 U.S.C.  
216(B),

Plaintiffs,

v.

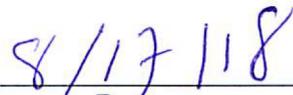
F5 PRODUCTIONS INC., a Florida  
Corporation, d/b/a McKENNA'S PLACE,

Defendant.

**DIMITRI BIENNESCAR'S NOTICE OF CONSENT TO JOIN**

Pursuant to 29 U.S.C. §216(b), I, Dimitri Biennescar, consent to become a party Plaintiff in the above-captioned action and agree to be represented by The Elstein Law Firm and The Law Offices of Neil D. Kodsi in this action.

  
\_\_\_\_\_  
DIMITRI BIENNESCAR

  
\_\_\_\_\_  
Date

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

CASE NO.:

DIMITRI BIENNECAR, RANDY SAGET,  
and all others similarly situated under 29 U.S.C.  
216(B),

Plaintiffs,

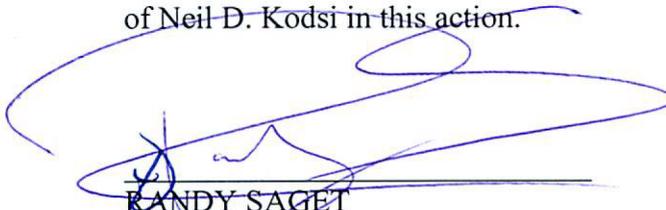
v.

F5 PRODUCTIONS INC., a Florida  
Corporation, d/b/a McKENNA'S PLACE,

Defendant.

**RANDY SAGET 'S NOTICE OF CONSENT TO JOIN**

Pursuant to 29 U.S.C. §216(b), I, Randy Saget, consent to become a party Plaintiff in the above-captioned action and agree to be represented by The Elstein Law Firm and The Law Offices of Neil D. Kodsi in this action.

  
\_\_\_\_\_  
RANDY SAGET

8 17 2018  
Date

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Palm Springs Eatery McKenna's Place Facing Lawsuit Seeking Allegedly Unpaid OT](#)

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