

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:17 cv 2122 T 30 JSS

EDUARDO ZAGUILAN, on his own behalf  
and on behalf of others similarly situated,

Plaintiff,

COLLECTIVE ACTION COMPLAINT

vs.

M & J CONSTRUCTION COMPANY OF  
PINELLAS COUNTY, INC., a Florida profit  
corporation, and NICK KOKKINOS, an  
individual,

Defendants.

2017 SEP - 8 AM 11:26  
CLERK US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA FLORIDA

FILED

COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiff EDUARDO ZAGUILAN, on his own behalf and on behalf of those similarly situated ("Plaintiff" or "ZAGUILAN"), who was an employee of Defendants M & J CONSTRUCTION COMPANY OF PINELLAS COUNTY, INC., a Florida for-profit corporation ("M&J"), and NICK KOKKINOS ("Kokkinos"), an individual (together, "Defendants"), and files this Collective Action Complaint for unpaid minimum wage compensation, unpaid overtime wage compensation, liquidated damages, retaliatory discharge, and other relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter, the "Act" or "FLSA"), and for a declaration of rights.

1. Plaintiff and the proposed collective action members were subjected to similar violations of the FLSA by Defendants. The class of similarly situated employees or potential collective action members sought to be certified under 29 U.S.C. § 216(b) is defined as:

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All persons who worked for Defendants during the three (3) years preceding this lawsuit and who, as a result of Defendants' policy of not paying employees for all hours suffered or permitted, earned less than the applicable minimum regular and overtime wage for one or more weeks during the Relevant Time Period.

2. Additionally, Plaintiff and those similarly situated seek a declaration of rights pursuant to Rule 57 of the Federal Rules of Civil Procedure and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. § 2201.
3. The precise size and identity of the class can be ascertained from the business records, tax records, and/or employee or personnel records of Defendants and its related and affiliated entities.

## **II. JURISDICTION AND VENUE**

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants transact business in this District; because all wages were earned and due to be paid in this District; because Defendants' restaurant is situated in this District; and because most, if not all, of the operational decisions were made in this District.
5. This Court has original jurisdiction over Plaintiff's federal question claims.

## **III. PARTIES**

6. Plaintiff EDUARDO ZAGUILAN ("ZAGUILAN") is over 18 years old and was a *sui juris* resident of Miami-Dade County, Florida, at all times material. He was an hourly, non-exempt employee of Defendants, as the term "employee" is defined by 29 U.S.C. § 203(e). Plaintiff consents to participate in this lawsuit.
7. Plaintiff ZAGUILAN and the proposed class members were subjected to similar violations of the FLSA by Defendants during the three years preceding the filing of this lawsuit.

8. Defendant M & J CONSTRUCTION COMPANY OF PINELLAS COUNTY, INC. is a Florida for-profit company that is located at 809 South Safford Avenue, Tarpon Springs, Pinellas County, Florida.
9. Defendant NICK KOKKINO (“KOKKINO”), an owner, agent and officer of M&J, the enterprise at which class members were employed. KOKKINO acted directly and indirectly in the interest of the enterprise. KOKKINO managed the enterprise and had the power to direct employees’ actions. KOKKINO had management responsibilities, degree of control over the enterprise’s financial affairs and compensation practices, and was in a position to exert substantial authority over policy relating to employee wages and whether to compensate (or not to compensate) employees at the enterprise in accordance with the FLSA making Defendant NICK KOKKINO an employer pursuant to 29 USC § 203(d).

#### IV. COVERAGES

10. During the all material times, Defendant M&J ws an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of § 29 U.S.C. 203(s)(1) of the Act, in that the enterprise had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.
11. During the all material times, Defendants were employers as defined by 29 U.S.C. § 203(d).
12. During all material times, the enterprise had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

#### V. FACTUAL ALLEGATIONS

13. Defendants operated a restaurant known as Swine Southern Table & Bar (“Swine”), located at 2415 Ponce de Leon Boulevard, Coral Gables, Miami-Dade County, Florida.
14. ZAGUILAN worked as a foreman and carpenter for Defendants from January, 2011, approximately, through May, 2017. As the maximum statute of limitations under the FLSA is three years, the Relevant Time Period is between September 5, 2014 and September 5, 2017.
15. During the Relevant Time Period, the applicable Florida minimum wage was \$7.93 per hour in 2014, \$8.05 per hour in 2015 and 2016, and \$8.10 per hour in 2017.
16. During the Relevant Time Period, the applicable Florida minimum overtime wage was \$11.895 per hour in 2014, \$12.075 per hour in 2015 and 2016, and \$12.15 per hour in 2017.
17. Plaintiff, and those similarly situated, were regularly required to perform work-related duties before clocking in, in violation of the Act.
18. Plaintiff, and those similarly situated, were regularly required to perform work-related duties after clocking out, in violation of the Act.
19. Throughout his employment, Plaintiff regularly worked in excess of forty (40) hours per seven-day week.
20. As the result of the above violations, Defendants must therefore pay Plaintiff, and those similarly situated, the minimum wage for each unpaid hour up to forty per week and the overtime wage for each unpaid hour worked in excess of forty per week.
21. Because of the institution and maintenance of the non-payment of wages due, Defendants willfully engaged in practices that denied Plaintiff and those similarly situated their applicable minimum and overtimes wages under the FLSA.
22. Plaintiff retained the undersigned counsel and agreed to pay a reasonable fee for all services rendered.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

23. Plaintiff seeks certification of collective action from this court, for himself and those similarly situated, pursuant to 29 U.S.C. 216(b).
24. Plaintiff and those similarly situated performed the same or similar jobs as one another in that they were employed as hourly employees in Defendants' construction business.
25. Plaintiff and those similarly situated were subjected to similar policies in that Defendants forced class members to perform work-related duties without being compensated.
26. These policies or practices were applicable to Plaintiff and members of the collective action. Application of these policies or practices does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policies or practices apply to all members of the collective action. Accordingly, members of the collective action are properly defined as:

All persons who worked for Defendants during the three (3) years preceding this lawsuit and who, as a result of Defendants' policy of not paying employees for all hours suffered or permitted, earned less than the applicable minimum regular and overtime wage for one or more weeks during the Relevant Time Period.

27. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (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.
28. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of forcing Plaintiff and those similarly situated to work without compensation.
29. Defendants violated § 207(a)(1) and § 215(a)(2), by employing Plaintiff and those similarly situated within the meaning of the FLSA for one or more workweeks without compensating

them for all hours worked at the minimum wage rate for all hours worked up to forty in a week and at the overtime rate of time-and-one-half for all hours worked in excess of forty hours in a work week. Thus, Defendants acted willfully by failing to pay Plaintiff, and those similarly situated, in accordance with the law

**COUNT I**  
**FAILURE TO PAY MINIMUM WAGE IN**  
**VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq**

- 30. Plaintiff reincorporates and re-alleges paragraphs 1 through 29 as though set forth fully herein and further alleges as follows:
- 31. Defendants willfully and intentionally forced Plaintiff, and those similarly situated, to perform work-related duties without compensation.
- 32. By forcing Plaintiff and those similarly situated to perform work-related duties without compensation, Defendants owe Plaintiff and Class the full minimum wage for each hour worked up to forty hours per workweek.
- 33. As a direct and proximate result of forcing Plaintiff and those similarly situated to to perform work-related duties without compensation, Plaintiff and those similarly situated have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff EDUARDO ZAGUILAN, on behalf of himself and those similarly situated, demands judgment in his favor and against Defendants M & J CONSTRUCTION COMPANY OF PINELLAS COUNTY, INC. and NICK KOKKINO, jointly and severally, as follows:

- a) Award to Plaintiff, and those similarly situated, for payment of all unpaid hours worked up to forty per workweek at the full minimum wage;

- b) Award to Plaintiff, and those similarly situated, liquidated damages equal to the payment of all unpaid hours worked up to forty per workweek at the full minimum wage or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

**COUNT II**  
**FAILURE TO PAY OVERTIME WAGE COMPENSATION**  
**IN VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq**

34. Plaintiff reincorporates and re-alleges paragraphs 1 through 29 as though set forth fully herein and further alleges as follows:
35. Defendants willfully and intentionally forced Plaintiff, and those similarly situated, to perform work-related duties without compensation.
36. By forcing Plaintiff and those similarly situated to perform work-related duties without compensation, Defendants owe Plaintiff and Class the full overtime wage for each hour worked in excess of forty hours per workweek.
37. As a direct and proximate result of forcing Plaintiff and those similarly situated to to perform work-related duties without compensation, Plaintiff and those similarly situated have been damaged for one or more weeks of work with Defendants.

WHEREFORE, Plaintiff EDUARDO ZAGUILAN, on behalf of himself and those similarly situated, demands judgment in his favor and against Defendants M & J CONSTRUCTION COMPANY OF PINELLAS COUNTY, INC. and NICK KOKKINO, jointly and severally, as follows:

- a) Award to Plaintiff, and those similarly situated, for payment of all unpaid hours worked in excess of forty per workweek at the rate of one-and-a-half times their regular rate of pay;
- b) Award to Plaintiff, and those similarly situated, liquidated damages equal to the payment of all unpaid hours worked in excess of forty per workweek at the rate of one-and-a-half times their regular rate of pay or, if liquidated damages are not awarded, then prejudgment interest;
- c) Award to Plaintiff, and those similarly situated, reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

**COUNT III**  
**DECLARATION OF RIGHTS**

38. Plaintiff reincorporates and re-alleges paragraphs 1 through 29 as though set forth fully herein, and further alleges as follows:
39. Plaintiff, and those similarly situated, and Defendants have a pending dispute under the FLSA, which this Court has jurisdiction to decide pursuant to 29 U.S.C. § 1331. The Court also has jurisdiction over Plaintiff's, and those similarly situated, request for a declaration of rights pursuant to 29 U.S.C. §§ 2201, 2202.
40. Defendants did not rely on a good faith defense in suffering or permitting Plaintiff, and those similarly situated, to work without compensation.
41. A declaration of rights would serve the useful purpose of clarifying and settling the legal relations at issue.
42. Many members of the proposed Class are currently employed by Defendants.



43. The entry of a declaration of the rights of the parties herein would afford relief from uncertainty, insecurity, and controversy giving rise to this proceeding as affecting Plaintiff, and those similarly situated, from Defendants, now and in the future.

WHEREFORE Plaintiff EDUARDO ZAGUILAN, on behalf of himself and those similarly situated, demands the entry of judgment in his favor and against Defendants 50 EGGS, INC., SWINE GABLES, LLC, and NICK KOKKINO, jointly and severally, as follows:

- a) Issue declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the FLSA;
- b) Enjoin Defendants from further violations of the FLSA;
- c) Award Plaintiff reasonable attorneys' fees and costs;
- d) Award such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted this 5th day of September, 2017.

By: s/Robert W. Brock II  
Robert W. Brock II, Esq.  
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*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **September 1, 2017**, I electronically filed the foregoing document via CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified in the attached Service in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: **s/Robert W. ZAGUILAN II**  
Robert W. ZAGUILAN II, Esq.  
Florida Bar No. 75320

**ZAGUILAN, et al v. M&J CONSTRUCTION and KOKKINO  
CASE NO.:**

**Service List**

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*Attorney 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 Re-filed Cases Below.

I. (a) PLAINTIFFS EDUARDO ZAGUILAN, on his own behalf and on behalf of others similarly situated,

DEFENDANTS M & J CONSTRUCTION COMPANY OF PINELLAS COUNTY, INC., a Florida profit corporation, and NICK KOKKINOS, an individual,

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

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.

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

Robert W. Brock II, Esq., Law Office of Lowell J. Kuvin, LLC 17 E. Flagler St, Suite 223, Miami, FL 33131, (305) 358-6800

Attorneys (If Known)

(d) Check County Where Action Arose: [X] 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)

- Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Foreign Nation 6 6

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

Click here for: Nature of Suit Code Descriptions

Grid of categories for Nature of Suit: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FOREFEITURE/PENALTY, 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 [X] NO b) Related Cases [ ] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. LENGTH OF TRIAL via 4-5 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: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 9/5/17 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFP 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: [FL Carpenter Claims Construction Company Owes Unpaid Wages](#)

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