

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 17-22511-cv

PAOLA ALBERO, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

PARDO'S GRILL CAFÉ, INC. d/b/a
CEVICHE 7 MARES PERUVIAN FOOD and
EULOGIO EMILIANO BENITEZ FERNANDEZ,
individually,

Defendants.

COMPLAINT

Plaintiff, PAOLA ALBERO ("Plaintiff"), on behalf of herself and others similarly situated, sues Defendants, PARDO'S GRILL CAFÉ, INC. d/b/a CEVICHE 7 MARES PERUVIAN FOOD and EULOGIO EMILIANO BENITEZ FERNANDEZ and alleges:

JURISDICTION AND VENUE

1. This action arises under the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq ("FLSA") and under the Florida Minimum Wage Act, F.S. 448.110 ("FMWA") to recover minimum wages under either state or federal law, unpaid overtime compensation under the FLSA, and liquidated damages and reasonable attorney's fees and costs under both laws.

2. Jurisdiction for Plaintiff's FLSA claims is founded on 29 U.S.C. § 216(b) and on 28 U.S.C. § 1337. Supplemental jurisdiction of Plaintiff's FMWA claim is founded on 29 U.S.C. § 1367.

3. Venue is proper in the Miami Division of the Southern District of Florida pursuant to 28 U.S.C. Section 1391(b) inasmuch the acts which form the basis of the claims arose within the Southern District of the State of Florida.

4. All jurisdictional prerequisites to bringing these claims have been met or waived. Plaintiff attaches as Composite Exhibit A the copy of its demand letter to Defendants and a signed receipt for that letter as proof of compliance with the pre-suit requirements of F.S. 448.110.

PARTIES

5. Plaintiff, PAOLA ALBERO, is a resident of Dade County, Florida, is sui juris, and was an employee of Defendants.

6. Defendant, PARDO'S GRILL CAFÉ, INC. d/b/a CEVICHE 7 MARES PERUVIAN FOOD ("PGC"), is a Florida corporation which operates a restaurant and bar at 7451 SW 8th Street, Miami, Florida in Miami-Dade County, Florida.

7. Upon information and belief, Defendant EULOGIO EMILIANO BENITEZ FERNANDEZ ("BENITEZ") is the President and majority shareholder of PGC. BENITEZ was responsible for the day-to-day management of PGC, including but not limited to hiring and firing of employees, their rates of pay, payment of wages, job assignments and scheduling of work hours.

8. PGC constitutes an enterprise engaged in commerce because it either ordered machinery, equipment, goods or materials from out of state sources, or employed

employees who worked on or handled goods or materials that moved through interstate commerce. Defendants employed two or more employees. On information and belief Defendants had or will have an annual gross volume of sales made or business done of at least \$500,000 at all times material to this action.

9. The additional persons who may opt into this action are all current and former employees of Defendants PGC and BENITEZ who are or were subject to the same unlawful pay practices described below.

FACTS

10. ALBERO worked for PGC and BENITEZ as a server/bar tender from on or about 7/21/15 through 2/19/17. To the extent that records exist regarding the exact dates of ALBERO's employment, such records are in the exclusive custody of Defendants.

11. From the beginning of her employment through on or about 5/29/16, ALBERO earned \$80.48 each week regardless of the number of hours that she worked in a work week.

12. From on or about 6/1/16, ALBERO earned \$125.00 each week regardless of the number of hours that she worked in a work week.

13. Defendants did not require employees to punch in or out and never otherwise kept track of the actual hours ALBERO or other similarly situated employees worked each work week.

14. For the vast majority of her employment, ALBERO and other similarly situated employees routinely worked 40 or more hours each week.

15. During the course of her employment, ALBERO and others similarly situated employees were paid at hourly rates which fell below the applicable federal and

Florida minimum wage standards. Defendants also suffered or permitted ALBERO and others who were similarly situated to work more than forty hours in a work week but failed or refused to pay the employees at the federally mandated rate of a time and a half for each hour over 40 in a work week.

16. Defendants also had a business practice of delaying payment of wages to employees, sometimes by as much as weeks or months. ALBERO complained to Defendants about pay she was owed from November, December and January, 2016.

17. In December, 2016, Defendants were sued for overtime wages by a former employee in the United States District Court for the Southern District of Florida. During the course of that lawsuit, Defendants coerced Plaintiff and other similarly situated employees to sign false statements that they always had been paid at the rate of \$5.00 or more per hour.

18. Plaintiff has been required to hire the undersigned law firm to enforce his rights under the Florida Minimum Wage Act and the Fair Labor Standards Act and has agreed to pay counsel a reasonable fee for its services.

COUNT I
FLSA - Minimum Wage and Overtime Pay
[PGC and BENITEZ]

19. Plaintiff incorporates by reference and re-states paragraphs 1 through 18 and further alleges:

20. Defendants PGC and BENITEZ (or either of them) violated the minimum wage and overtime pay provisions of the FLSA in that they employed Plaintiff and others similarly situated to her but failed to compensate them at the federally required minimum wage rate of \$7.25 per hour for the first forty hours of their work each work week and

overtime pay at a rate of time and a half for all hours they worked in excess of 40 in a work week and also by delaying payment of wages due to Plaintiff and others similarly situated..

21. Defendants PGC and BENITEZ (or either of them) willfully and knowingly disregarded their obligations under the FLSA in order to gain corporate and personal financial benefits.

22. By reason of such intentional, willful and unlawful acts, ALBERO and those similarly situated to her have suffered damages and are entitled not only to minimum wages and overtime pay for their work hours but an equal amount as liquidated damages plus reimbursement of their attorney's fees and costs.

WHEREFORE, ALBERO and those similarly situated to her who will opt into this action demand judgment against Defendants PGC and BENITEZ for:

A. Minimum wages that are due for all hours they worked for which they have not been properly compensated,

B. Overtime pay that is due for all hours worked for which they were not properly compensated;

C. An amount equal to the minimum wages and overtime pay that are due to them as liquidated damages; and pre-judgment interest for the delayed payments of wages;

D. Costs of suit and an award of reasonable attorney's fees pursuant to 29 U.S.C. §216(b); and,

E. Declaratory, injunctive and such other relief as the Court deems just and proper.

COUNT II - FMWA - MINIMUM WAGES
(PGC and BENITEZ)

23. ALBERO incorporates by reference and re-alleges paragraphs 1 through 18 and further alleges:

24. Defendants PGC and BENITEZ (or either of them) violated the minimum wage provisions of the FMWA in that they employed Plaintiff and others similarly situated to her but failed to compensate them at the state required minimum wage rates set for 2015-2017 for the first forty hours of work each work week.

25. Defendants PGC and BENITEZ (or either of them) willfully and knowingly disregarded their obligations under the FMWA in order to gain corporate and personal financial benefits.

26. By reason of such intentional, willful and unlawful acts, ALBERO and those similarly situated to her have suffered damages and are entitled not only to the applicable minimum wage for each of their work hours up to and including the first forty hours of work each work week but an equal amount as liquidated damages plus reimbursement of their attorney's fees and costs.

WHEREFORE, ALBERO and those similarly situated to her who will opt into this action demand judgment against Defendants PGC and BENITEZ for:

A. Minimum wages that are due them for all hours worked by them for which they have not been properly compensated;

B. An equal amount of the minimum wages and overtime pay that is due to them as liquidated damages; and pre-judgment interest for the delayed payments of wages;

C. Costs of suit and an award of reasonable attorney's fees pursuant to F.S. 448.110(6)(c) and,

D. Declaratory, injunctive and such other relief as the Court deems just and proper.

E. Such other relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

Dated this 6th day of July, 2017.

LANGBEIN & LANGBEIN, P.A.
Attorneys for the Plaintiff
8181 NW 154th Street, Suite 105
Miami Lakes, FL 33016
Tel: (305) 556-3663
Fax: (305) 556-3647

By: Leslie W. Langbein
Leslie W. Langbein, Esq.
Fla. Bar No. 305391

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
PAOLA ALBERO and all others similarly situated,
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
Leslie W. Langbein, Esq., 8181 NW 154th St, Suite 105, Miami Lakes, FL 33016 (305) 556-3663

DEFENDANTS
PARDO'S GRILL CAFE, INC. and EULOGIO EMILIANO BENITEZ FERNANDEZ
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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)
PTF DEF
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)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
SOCIAL SECURITY
FEDERAL TAX SUITS
BANKRUPTCY
PROPERTY RIGHTS
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 (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC Section 201 et seq
Brief description of cause:
Unpaid Minimum Wages and Overtime Pay

VII. 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

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/07/2017
SIGNATURE OF ATTORNEY OF RECORD /s/ Leslie W. Langbein, Esq.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

PAOLA ALBERTO

Plaintiff

v.

PARDO'S GRILL CAFE, INC. et al

Defendant

Civil Action No. 17-225110-cv

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PARDO'S GRILL CAFE, INC.
c/o Registered Agent
Eulogio Emiliano Benitez Fernandez
7451 SW 8th Street
Miami, FL 33144

A lawsuit has been filed against you.

Within 20 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:

Leslie W. Langbein, Esq.
LANGBEIN & LANGBEIN, P.A.
8181 NW 154th Street, Suite 105
Miami Lakes, FL 33016
Phone: (305) 556-3663

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: 07/06/2017

Signature of Clerk or Deputy Clerk

Civil Action No. 17-225110-cv

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:

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

PAOLA ALBERTO

Plaintiff

v.

PARDO'S GRILL CAFE, INC. et al

Defendant

Civil Action No. 17-225110-cv

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Eulogio Emiliano Benitez Fernandez
7451 SW 8th Street
Miami, FL 33144

A lawsuit has been filed against you.

Within 20 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:

Leslie W. Langbein, Esq.
LANGBEIN & LANGBEIN, P.A.
8181 NW 154th Street, Suite 105
Miami Lakes, FL 33016
Phone: (305) 556-3663

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: 07/06/2017

Signature of Clerk or Deputy Clerk

Civil Action No. 17-225110-cv

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(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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Peruvian Restaurant Sued Once Again Over Alleged Wage Violations](#)
