

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 APR -3 PM 12:19
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

GUILHERME AMORIM, on his own
behalf and on behalf of others similarly
situated,

Plaintiff(s),

v.

Case No.: 0:17-cv-578-ORL-37-TBS

GMR INTERNATIONAL CUISINE, INC.
d/b/a GILSON'S BRAZILIAN
RESTAURANT, and GILSON
RODRIGUES, individually,

Defendants.

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, GUILHERME AMORIM, on his own behalf and on behalf of others similarly situated, by and through their undersigned counsel, and hereby files this Complaint against the Defendants, GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON'S BRAZILIAN RESTAURANT, and GILSON RODRIGUES, individually, (hereinafter "Defendants"), and allege as follows

INTRODUCTION

1. This is an action by the Plaintiff against his former employer for unpaid overtime wages pursuant to the Fair Labor Standards Act ("FLSA"). Plaintiff seeks overtime damages, reasonable attorney's fees, declaratory relief, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the "FLSA").

2. This action is brought under the FLSA to recover from Defendant overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

3. This action is intended to include each and every “hourly paid employee” who worked for the Defendants at any time within the past three (3) years.

JURISDICTION

4. This action arises under the Fair Labor Standards Act, 29 U.S.C. §210, *et seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. §216(b).

VENUE

5. The venue of this Court over this controversy is proper based upon the claim arising in Orange County, Florida.

PARTIES

6. Plaintiff was an hourly paid employees and performed related activities for Defendants in Orange County, Florida.

7. Defendant, GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON’S BRAZILIAN RESTAURANT, is a Brazilian restaurant.

8. Defendant, GILSON RODRIGUES, is the President, Registered Agent, General Manager, and Owner of the company.

FACTUAL ALLEGATIONS

9. Plaintiff, and those similarly situated employees, worked as “hourly paid employees” for Defendants and performed related activities.

10. Plaintiff worked in this capacity from approximately December 2013 through August 2016.

11. Plaintiff and those similarly situated were hourly paid employees.

12. During the relevant time period (December 2014 and continuing), Plaintiff was paid by the “tip credit” (less than minimum wage plus tips).

13. Plaintiff, and other similarly situated employees, routinely worked in excess of forty (40) hours per week as part of their regular job duties.

14. Despite working more than forty (40) hours per week, Defendants failed to pay Plaintiff, and other similarly situated employees, overtime compensation at a rate of no less than time and one-half their regular rate of pay for *all* hours worked over forty (40) in a workweek.

15. Plaintiff and those similarly situated were eligible for overtime provided they worked more than forty (40) hours per week.

16. Defendants’ failure and/or refusal to properly compensate Plaintiff and others similarly situated at the rates and amounts required by the FLSA were willful.

COVERAGE

17. At all material times relevant to this action (2014– 2017), Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

18. At all material times relevant to this action (2014– 2017), Defendants made gross earnings of at least \$500,000 annually.

19. At all material times relevant to this action (2014– 2017), Defendants accepted payments from customers based on credit cards issued by out-of-state banks.

20. At all material times relevant to this action (2014– 2017), Defendants routinely ordered materials or supplies from out of state, (i.e., restaurant supplies and equipment, food, beverages, etc.).

21. At all material times relevant to this action (2014– 2017), Defendants had two (2) or more employees engaged in commerce, handling or otherwise working on materials which have been moved in or produced for commerce, (i.e., restaurant supplies and equipment, food, beverages, etc.).

22. At all material times relevant to this action (2014 – 2017), Plaintiff was individually engaged in commerce during his employment with Defendants, by working with food supplies and equipment from out-of-state.

23. At all material times relevant to this action (2014 – 2017), Defendants used U.S. Mail to send and receive correspondence to and from other states.

24. At all times relevant to this action (2014 – 2017), Defendants failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff and others similarly situated performed services for Defendants for which no provisions were made by Defendants to properly pay Plaintiff and others similarly situated for those hours worked in excess of forty (40) within a work week.

COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff and the class members performed the same or similar job duties as one another in that they provided restaurant related services for Defendants.

26. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were not compensated at time-and-one-half their regular rate of pay for all hours worked in excess of 40 hours in a work week.

27. Thus, the class members are owed overtime wages for the same reasons as Plaintiff.

28. Defendants' failure to compensate employees for hours worked in excess of forty (40) hours in a work week as required by the FLSA results from a policy or practice of failure to assure that hourly employees were paid for all overtime hours worked based on the Defendants' failure to credit hourly employees with all hours worked.

29. This policy or practice was applicable to Plaintiff and the class members.

30. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the same policies or practices which resulted in the non-payment of overtime to Plaintiff apply to all class members.

31. Accordingly, the class members are properly defined as:

All servers who worked for Defendants, GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON'S BRAZILIAN RESTAURANT, and GILSON RODRIGUES, within the state of Florida within the last three years.

32. Defendants knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the class members.

33. 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.

34. During the relevant period, Defendants violated § 7(a)(1) and § 15(a)(2), by employing individuals in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for one or more workweeks without compensating such employees for their work at a rate of at least the time and one-half for all hours worked in excess of forty (40) hours in a work week.

35. Defendants have acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

COUNT I
RECOVERY OF OVERTIME COMPENSATION AGAINST
GMR INTERNATIONAL CUISINE, INC. d/b/a
GILSON'S BRAZILIAN RESTAURANT

36. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 35 above as if fully set forth herein.

37. Plaintiff and those similarly situated to him worked for Defendant at various times from 2014 – 2017 as hourly employees for Defendant's businesses located at 8191 Vineland Avenue, Orlando, Florida 32821.

38. Throughout Plaintiff's employment, the Defendant repeatedly and willfully violated Section 7 and Section 15 of the FLSA by failing to compensate Plaintiff, and other similarly situated employees, at a rate not less than one and one-half the regular rate at which they were employed for work weeks longer than forty (40) hours.

39. Specifically, Plaintiff and those similarly situated employees worked multiple weeks in excess of forty (40) hours a week, yet were not compensated for all

work in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which they were employed.

40. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff and others similarly situated to him, are in the possession and custody of Defendants.

COUNT II
RECOVERY OF OVERTIME COMPENSATION
AGAINST GILSON RODRIGUES. INDIVIDUALLY

42. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 35 above as if fully set forth herein.

43. Defendant, GILSON RODRIGUES, is the owner, General Manager and Registered Agent of Defendant, GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON'S BRAZILIAN RESTAURANT.

44. Defendant, GILSON RODRIGUES, is the acting manager who acted with direct control over the work, pay, and job duties of Plaintiff and all other similarly situated individuals.

45. Defendant, GILSON RODRIGUES, had the power to hire and fire Plaintiff and all other similarly situated individuals.

46. Defendant, GILSON RODRIGUES, supervised and controlled Plaintiff's, as well as that of all other similarly situated individuals, work schedule or conditions of employment.

47. Defendant, GILSON RODRIGUES, determined Plaintiff's rate and method of payment.

48. Defendant, GILSON RODRIGUES, maintained employment records.

49. As such, Defendant, GILSON RODRIGUES, is charged with responsibility for violations of Plaintiff's rights and the rights of and all other similarly situated individuals to overtime and resulting damages.

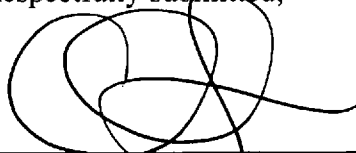
WHEREFORE, Plaintiff, on behalf of himself and all other similarly situated employees, demands judgment against Defendant, GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON'S BRAZILIAN RESTAURANT, and GILSON RODRIGUES, individually, for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by them for which Defendants did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief that this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury.

Dated this 31st day of March, 2017.

Respectfully submitted,



Carlos V. Leach, Esq.

F. B. No.: 540021

MORGAN & MORGAN, P.A.

20 N. Orange Ave., 16th Floor

Post Office Box 4979

Orlando, Florida 32802-4979

Telephone: (407) 420-1414

Facsimile: (407) 425-8171

Email: Cleach@forthepeople.com

Attorneys for Plaintiff(s)

JS 44 (Rev. 11/15)

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)

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Carlos V. Leach, Esq., MORGAN & MORGAN, P.A., 191 Peachtree Street, N.E., Suite 4200, P.O. Box 57007 Atlanta, GA 30343-1007; Tel: (404) 965-8811; Fax: (404) 965-8812; Email: CLeach@forthepeople.com

DEFENDANTS
GMR INTERNATIONAL CUISINE, INC. d/b/a GILSON'S BRAZILIAN RESTAURANT, and GILSON RODRIGUES, individually

County of Residence of First Listed Defendant **Orange County**
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

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		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habens Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609

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

VI. CAUSE OF ACTION

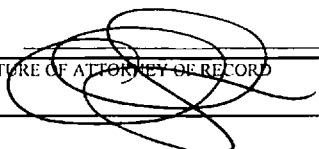
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216(b)

Brief description of cause:
unpaid overtime compensation

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ **Unknown at this time** CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

JUDGE _____ DOCKET NUMBER _____

DATE: **03/31/2017** SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING 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: [Gilson's Brazilian Restaurant, Owner Served with FLSA Lawsuit](#)
