

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 8:17-cv-1430-T-30AAS

PATRICIA AVILA, individually and on behalf of all
others similarly situated,

Plaintiffs,

COLLECTIVE ACTION

vs.

SP BEACH HOTEL CORP.,

Defendant.

COMPLAINT

COMES NOW, Plaintiff, PATRICIA AVILA (Plaintiff), individually and on behalf of all other similarly situated individuals, by and through the undersigned counsel, and sues SP BEACH HOTEL CORP. (Defendant) under the Fair Labor Standards Act, and Florida statutory and common law, and alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. §§ 206, 207, and 216(b), which provides that suit under the Fair Labor Standards Act (hereinafter "FLSA") "may be maintained against any employer...in any Federal or State court of competent jurisdiction."
2. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §1331.

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MIDDLE DISTRICT OF FLORIDA
TAMPA FLORIDA

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3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) as the Defendants reside in and/or do business within this District. In addition, a substantial part of the events and omissions giving rise to the claims plead in this Complaint occurred within this District.

PARTIES

4. Plaintiff is a resident of the State of Florida and was an employee of the Defendants in this District and division during the three (3) years before the date on which this Complaint was filed.
5. Plaintiff brings this case on behalf of herself and other similarly situated individuals, as defined by U.S.C. § 201, sec. 3(e), who currently work, or who worked, for Defendant during the three (3) years before the date the Complaint was filed.
6. During the three (3) years before the date on which this Complaint was filed, Plaintiff was employed by Defendants as a banquet server.
7. At all times material, Plaintiff, and all others similarly situated, was an “employee” of the Defendants within the meaning of the Act, 29 U.S.C. § 203(e)(1).
8. The representative Plaintiff signed an opt-in consent form to join this lawsuit. See Exhibit “A”.
9. Defendant, SP HOTEL CORP., is a New York for-profit corporation duly registered to do business in the State of Florida.

10. At all times material herein, Defendant's principal place of business was located at 3400 Gulf Beach Boulevard, St. Pete Beach, Florida 33706.
11. Defendant, at all times material, are "employers" of the Plaintiff within the meaning of the FLSA, 29 U.S.C. § 203(d).

FACTUAL ALLEGATIONS

12. Defendant is an employer and enterprise engaged in interstate commerce and is subject to the FLSA.
13. At all times material, Defendant owned and operated the Don Cesar Hotel, located at 3400 Gulf Beach Boulevard, St. Pete Beach, Florida 33706.
14. Plaintiff has worked as a banquet server at the Don Cesar Hotel since approximately 1994, predating Defendant's ownership of the hotel.
15. Defendant, as part of its business, would engage in interstate commerce by, but not limited to, processing credit cards which are instruments of interstate commerce, transacting business with foreign corporations which were part of interstate commerce, purchasing equipment, materials, parts, and supplies from dealers, wholesalers, suppliers, and retailers out of state which were part of interstate commerce, by advertising on the World Wide Web and other mediums to potential clients outside the State of Florida, and by transacting business across state lines, all of which are part of interstate commerce.
16. Furthermore, Defendant obtained, exchanged, and sent/received funds to and from of the State of Florida, used telephonic transmissions going outside of the State of

Florida to conduct business, and transmitted electronic information through computers, the internet, via email, and otherwise outside of the State of Florida.

17. Defendant has annual revenue of at least five hundred thousand dollars (\$500,000.00) and is subject to the FLSA.
18. Defendant controlled the day to day operations of the *Don Cesar Hotel* and were actively involved in the day to day operations of same, including matters concerning hiring, firing, payroll, setting policies, making procedures, setting goals and quotas, marketing, establishing services performed, setting pricing for products and services, and other business operations.
19. Defendant supervised the operations of the *Don Cesar Hotel* including hiring and firing employees, setting work schedules for the employees, and providing work assignments for employees.
20. At all times material herein, Defendant controlled Plaintiff's day to day activities, supervised, and/or had operational control over Plaintiff. Defendant was responsible for hiring Plaintiff, having the ability to terminate Plaintiff, setting Plaintiff's rate of pay, determining if the minimum wage or overtime was to be paid, determining if commission(s) were to be paid, setting Plaintiff's work schedule including the number of days and hours worked, determining and assigning Plaintiff's work duties, and supervising Plaintiff.
21. Plaintiff was covered by the FLSA as she utilized the instrumentalities of commerce while he performed her duties for the Defendants.

22. While employed with Defendant, Plaintiff's work duties included, but were not limited to, setting up and breaking down banquet accommodations.
23. Plaintiff was a "non-exempt" employee of Defendant.
24. Plaintiff was an hourly employee.
25. Plaintiff worked the number of hours required by Defendant, but was not paid for each and every hour worked during a work week.
26. Defendant suffered and permitted Plaintiff to work as its employee, but did not pay the appropriate rate for all work that Plaintiff performed for Defendant.
27. Plaintiff worked over forty (40) hours in a work week for Defendant, but was not paid overtime compensation at the proper overtime rate by Defendant for all those hours worked over forty (40) in a work week.
28. Defendant was involved in, and responsible for, paying Plaintiff for work performed.
29. The records concerning the hours worked by Plaintiff are in the exclusive possession and sole custody and control of Defendant. Therefore, Plaintiff is unable to determine and state the exact amount of damages due.
30. Defendant's actions in failing and/or refusing to pay Plaintiff the applicable overtime compensation, as required by the FLSA, were willful and not in good faith.
31. Plaintiff has retained the undersigned attorneys and Defendant is obligated to pay them a reasonable fee for their services pursuant to the FLSA, and Florida law.

FLSA COLLECTIVE ACTION ALLEGATIONS

31. **Representative Plaintiff, PATRICIA AVILA, brings this case as a collective action on behalf of herself and other similarly-situated individuals pursuant to 29 U.S.C. §216(b) to recover unpaid overtime compensation, liquidated damages, statutory penalties, attorneys' fees and costs, and other damages owed.**
32. **The proposed collective class of similarly-situated persons is defined as:
All individuals who currently work or previously performed work for Defendant, its subsidiarics or affiliated companies, in the state of Florida as a server, banquet server, or other similarly situated staff.**
33. **This action is properly maintained as a collective action because the Representative Plaintiff is similarly situated to the members of the collective class with respect to job title, job description, job duties, and Defendant's compensation policies and procedures.**
34. **Defendant encouraged, suffered and permitted the Representative Plaintiff and the collective class to work more than forty (40) hours per week without the proper overtime compensation.**
35. **Defendant knew that the Representative Plaintiff and the collective class performed work that required additional wages and overtime compensation to be paid. Nonetheless, Defendant operated under a scheme, as described above, to deprive the Representative Plaintiff and the collective class of wages and overtime compensation.**
36. **Defendant's conduct, as alleged herein, was willful and has caused significant damages to the Representative Plaintiff and the collective class.**

42. During the previous three year period before this Complaint was filed, Plaintiff regularly worked, at Defendant's insistence, in excess of forty (40) hours per week.
43. Section 207(a)(1) of the FLSA prohibits an employer from employing its non-exempt employees for a work week longer than forty (40) hours, unless such employee receives compensation for all hours he or she is employed in excess of forty hours at a rate not less than one and one-half times the regular rate of pay.
44. Plaintiff was not exempt from receiving overtime compensation under the FLSA.
45. As such, Plaintiff was entitled to be paid at a rate one and one-half (1 ½) times the regular hourly rate for each hour worked in excess of forty (40) in a work-week.
46. Defendant employed Plaintiff in excess of forty (40) hours in at least one work week without paying her at a rate of one and one half (1 ½) times the regular rate of pay for all hours worked in excess of forty (40) in the work week as required by the FLSA, and thus have violated Plaintiff's rights under § 207 of the FLSA.
47. As a consequence of the Defendant's violation of the FLSA, Plaintiff is entitled to one and one half (1 ½) times the regular rate of pay for all hours worked in excess of forty (40) hours for each week employed by Defendant and for which she was not paid one and one half times (1 ½) the regular rate.
48. Defendant knew and was aware at all times that Plaintiff worked more than forty (40) hours per week without receiving the appropriate overtime compensation.
49. Defendant failed and refused to properly compensate Plaintiff at the proper overtime rate for each hour worked in excess of forty (40) in a work-week.

- i. Violated overtime provisions of the FLSA by failing to pay overtime wages to Plaintiff and similarly-situated persons who opt-in to this action; and,
 - ii. Willfully violated overtime provisions of the FLSA.
- D. Award compensatory damages, including all pay owed and wrongful deductions made, in an amount according to proof;
- E. Award liquidated damages on all compensation due accruing from the date such amounts were due;
- F. Award all costs and reasonable attorneys' fees incurred prosecuting this claim;
- G. Grant leave to amend to add claims under applicable federal laws;
- H. Grant leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and,
- I. For such further relief as the Court deems just and equitable.

PLAINTIFF DEMANDS A TRIAL BY JURY

DATED this 12th of June, 2017.

Respectfully submitted,

/s/ Jeremiah J. Talbott
JEREMIAH J. TALBOTT, ESQ.
FL Bar No. 015484
TRAVIS P. LEPICIER, ESQ.
FL Bar No. 0099843
Law Office of Jeremiah J. Talbott, P.A.
900 E. Moreno Street
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jjtalbott@talbottlawfirm.com
civilfilings@talbottlawfirm.com
Attorneys for Plaintiff

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 PATRICIA AVILA, individually and on behalf of all others similarly situated, (b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Jeremiah J. Talbot, P.A. 900 East Moreno Street, Pensacola, FL 32503 (850) 437-9600	DEFENDANTS SP BEACH HOTEL CORP County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) _____
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 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) (For Diversity Cases Only) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:45%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <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	TORTS 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	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 IIIA (1395f) <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))	OTHER STATUTES <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 Habeas 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	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. Sect. 201

Brief description of cause:
 Fair Labor Standards Acts

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

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

DATE: 06/13/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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 U.S. DISTRICT COURT
 TAMPA FLORIDA

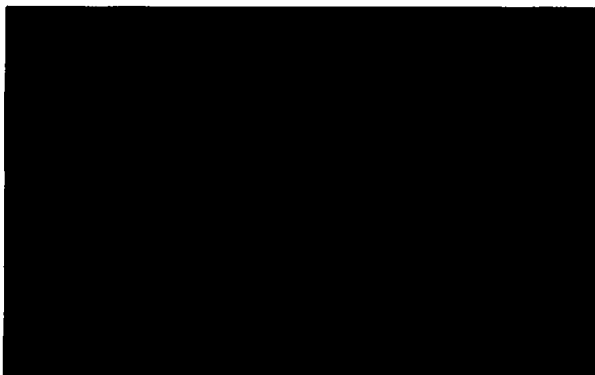
CONSENT FORM

1. I consent and agree to pursue my claims for unpaid overtime and/or minimum wages through the action filed against SP BEACH HOTEL CORP D/B/A The Don Ceasar Resort in St. Petersburg Fl, or any other entity liable for my unpaid wages.
2. I understand that this action is brought under the Fair Labor Standards Act and/or state wage and hour laws. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court or parties certify this case as a collective or class action. If someone else serves as the class representative(s), then I designate the class representative(s) as my agent(s) to make decision on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with Plaintiff's counsel concerning fees and cost, the entering into a settlement agreement with my employer, and all other matters pertaining to this action.
4. In the event the case is certified and then decertified, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

Signature: 
Patricia m avila (May 9 2017)

Date: May 9, 2017

Print Name: Patricia m avila



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Don Cesar Hotel Employee Files Unpaid OT Suit](#)
