

FILED

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

2017 JUL -3 PM 3:29  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

LUIS MASSARI, on behalf of himself,  
and those similarly situated,

Case No.:

Plaintiff,

8:17 cv 1608 T 33 AAS

v.

GOLD RING CATERING, INC., a Florida  
corporation, JOSE A. BACALLAO, and  
SANDRA BACALLAO, individuals,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LUIS MASSARI ("Plaintiff"), by and through his undersigned counsel and on behalf of himself and those similarly situated, hereby brings this action against Defendants, GOLD RING CATERING, INC. ("Gold Ring"), JOSE A. BACALLAO ("Jose"), and SANDRA BACALLAO ("Sandra") (collectively referred to as "Defendants"), and in support of his claims states as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$15,000, exclusive of interest, fees, and costs, for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Plaintiff files this Complaint as a collective action under 29 U.S.C. § 216(b).

2. This Court has original jurisdiction over these claims, as they arise under the Constitution, laws, or treaties of the United States.

728-44475  
#400

3. Venue is proper in this Court because one or more Defendants reside in this district and all Defendants are Florida residents and/or because a substantial part of the events or omissions giving rise to the claims occurred in this district.

**PARTIES**

4. Plaintiff is a resident of Hillsborough County, Florida.

5. Gold Ring is a corporation conducting business in Hillsborough County, Florida, with a principal address of 2510 N. Tampa St., Tampa, Florida 33602.

6. Jose is a resident of Hillsborough County, Florida, and is the Vice President of Gold Ring.

7. Sandra is a resident of Hillsborough County, Florida, and is the President and Registered Agent of Gold Ring.

8. At all times material to this action, Jose was an individual who owned and/or operated Gold Ring and who exercised the authority to: (a) supervise and control employee work schedules, job duties, and/or conditions of employment; (b) control significant aspects of Gold Ring's day-to-day operations, including compensation of employees; (c) maintain employment records; and/or (d) hire and/or terminate employees.

9. At all times material to this action, Sandra was an individual who owned and/or operated Gold Ring and who exercised the authority to: (a) supervise and control employee work schedules, job duties, and/or conditions of employment; (b) control significant aspects of Gold Ring's day-to-day operations, including compensation of employees; (c) maintain employment records; and/or (d) hire and/or terminate employees.

10. The similarly situated individuals on whose behalf this Complaint is filed are those who have been employees of Defendants at any time during the past three (3) years and who had similar job duties and pay provisions to those of Plaintiff and who were subject to similar violations of the FLSA.

### **GENERAL ALLEGATIONS**

11. Plaintiff has satisfied all conditions precedent to bring this action, or such conditions have been waived.

12. Plaintiff has hired undersigned counsel and agreed to pay them a fee

13. Plaintiff requests a jury trial for all issues so triable.

14. At all times material hereto, Plaintiff was an “employee” of Defendants within the meaning of the FLSA.

15. At all times material hereto, Gold Ring was an “employer” within the meaning of the FLSA.

16. At all times material hereto, Jose was an “employer” within the meaning of the FLSA.

17. At all times material hereto, Sandra was an “employer” within the meaning of the FLSA.

18. At all times material hereto, Defendants were an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

19. At all times material hereto, Plaintiff was engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

20. At all times material hereto, Plaintiff was not exempt from the requirements of the FLSA.

21. At all times material hereto, the similarly situated employees were “employees” of Defendants within the meaning of the FLSA.

22. At all times material hereto, the similarly situated employees were engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

23. At all times material hereto, the similarly situated employees were not exempt from the requirements of FLSA.

### **FACTS**

21. Gold Ring is a restaurant offering dine-in, take-out, and catering services and goods.

22. Plaintiff worked for Defendants from July 2014 through March 23, 2017.

23. At all times during Plaintiff’s employment with Defendants, Plaintiff was compensated on an hourly basis, rather than a salary basis.

24. During his employment with Defendants, Plaintiff’s regular job duties included working as a cashier and/or assisting the cashier, taking customer orders at the front counter, cooking the food and/or assisting the cooks, obtaining produce and/or ingredients for Gold Ring, and making catering deliveries.

25. During the statutory period, Defendants directed or permitted Plaintiff to regularly work in excess of forty (40) hours within a work week, but failed to pay him at least the applicable overtime rate for all such overtime hours worked.

26. During the statutory period, Defendants directed or permitted Plaintiff to work hours, but failed to pay him at least the applicable minimum wage for all such hours worked.

27. During the statutory period, Defendants directed or permitted the similarly situated employees to regularly work in excess of forty (40) hours within a work week, but failed to pay such employees at least the applicable overtime rate for all such overtime hours worked.

28. During the statutory period, Defendants directed or permitted the similarly situated employees to work hours, but failed to pay such employees at least the applicable minimum wage for all such hours worked.

29. By failing to accurately record all of the hours worked by Plaintiff and the similarly situated employees, Defendants have failed to make, keep, and preserve records with respect to each of their employees in a manner sufficient to determine such employees' wages, hours, and other conditions of employment, in violation of the FLSA.

30. Defendants' unlawful actions, as alleged herein, were willful and showed reckless disregard for the provisions of the FLSA.

### **COLLECTIVE ACTION ALLEGATIONS**

31. Plaintiff brings this action as an "opt-in" collective action on behalf of similarly situated employees of Defendants pursuant to 29 U.S.C. § 216(b).

32. The similarly situated employees are any and all individuals Defendants employed at any time during the past three (3) years, who had similar job duties and pay provisions to those of Plaintiff and who were subject to similar violations of the FLSA.

33. The total number and identities of the similarly situated employees may be determined from Defendants' records and through other forms of discovery; and the similarly situated employees may easily and quickly be notified of the pendency of this action.

34. Plaintiff is similar to the similarly situated employees because some or all of the job duties he regularly performed during his employment with Defendants are similar to those regularly performed by the similarly situated employees during the past three (3) years.

35. Plaintiff is similar to the similarly situated employees because, during the past three (3) years, Defendants unlawfully denied Plaintiff and the similarly situated employees full payment of their minimum wage and/or overtime wages mandated by the FLSA.

36. Plaintiff's experience with Defendants' payroll and compensation practices is typical of the experiences of the similarly situated employees.

37. Defendants' failure to pay Plaintiff at least the applicable minimum wage for all hours worked is common to the similarly situated employees.

38. Defendants' failure to pay Plaintiff all overtime wages due at a rate that was at least equal to the applicable overtime rate is common to the similarly situated employees.

**COUNT I - FLSA OVERTIME VIOLATIONS**  
**(All Plaintiffs against Defendants)**

39. Plaintiff re-alleges the allegations of Paragraphs 1 through 38, as fully set forth herein.

40. Plaintiff brings this action on behalf of himself and all other similarly situated employees in accordance with 29 U.S.C. § 216(b). Plaintiff anticipates that as this case proceeds, other individuals will sign consent forms and join this collective action as plaintiffs.

41. During the statutory period, Defendants directed or permitted Plaintiff and the similarly situated employees to regularly work in excess of forty (40) hours within a work week, but failed to pay such employees at least the applicable overtime rate for all such overtime hours worked.

42. The practice described in the foregoing paragraph violated the provisions of the FLSA.

43. Defendants' unlawful conduct, as alleged and described above, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

44. As a result of the foregoing, Plaintiff and the similarly situated employees have suffered damages.

**WHEREFORE**, Plaintiff and all similarly situated employees who join this collective action pray this Court award the following relief:

a. Designation of this action as a collective action on behalf of Plaintiff and the prospective similarly situated employees that he seeks to represent, in accordance with the FLSA;

b. Prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. § 216(b);

c. Equitable tolling of the statute of limitations from the date of the filing of this complaint until the expiration of the deadline for filing consent to sue forms under 29 U.S.C. § 216(b);

d. Judgement against Defendants for an amount equal to the unpaid overtime wages, at the applicable overtime rate, of Plaintiff and all opt-in similarly situated employees;

e. Judgement against Defendants for liquidated damages in an amount equal to the unpaid overtime wages, at the applicable overtime rate, of Plaintiff and all opt-in similarly situated employees;

f. Declaratory judgment stating that the practices complained of herein are unlawful under the FLSA;

g. To the extent liquidated damages are not awarded, an award of prejudgment interest;

h. All reasonable costs and attorneys' fees incurred prosecuting these claims;  
and

i. Any additional relief as the Court deems just and proper.

**COUNT II- FLSA MINIMUM WAGE VIOLATION**  
**(All Plaintiffs against Defendants)**

45. Plaintiff re-alleges the allegations of Paragraphs 1 through 38, as fully set forth herein.

46. Plaintiff brings this action on behalf of himself and all other similarly situated employees in accordance with 29 U.S.C. § 216(b). Plaintiff anticipates that as this case proceeds, other individuals will sign consent forms and join this collective action as plaintiffs.



47. During the statutory period, Defendants directed or permitted Plaintiff and the similarly situated employees to hours but failed to pay such employees at least the applicable minimum wage for all such hours worked.

48. The practice described in the foregoing paragraph violated the provisions of the FLSA.

49. Defendants' unlawful conduct, as alleged and described above, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

50. As a result of the foregoing, Plaintiff and the similarly situated employees have suffered damages.

**WHEREFORE**, Plaintiff and all similarly situated employees who join this collective action pray this Court award the following relief:

a. Designation of this action as a collective action on behalf of Plaintiff and the prospective similarly situated employees that he seeks to represent, in accordance with the FLSA;

b. Prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. § 216(b);

c. Equitable tolling of the statute of limitations from the date of the filing of this complaint until the expiration of the deadline for filing consent to sue forms under 29 U.S.C. § 216(b);

d. Judgement against Defendants for an amount equal to the unpaid wages of Plaintiff and all opt-in similarly situated employees;

- e. Judgement against Defendants for liquidated damages in an amount equal to the unpaid wages of Plaintiff and all opt-in similarly situated employees;
- f. Declaratory judgment stating that the practices complained of herein are unlawful under the FLSA;
- g. To the extent liquidated damages are not awarded, an award of prejudgment interest;
- h. All reasonable costs and attorneys' fees incurred prosecuting these claims; and
- i. Any additional relief as the Court deems just and proper.

Respectfully submitted,



Trenton H. Cotney  
Florida Bar No. 176214  
Benjamin S. Briggs  
Florida Bar No. 113814  
**TRENT COTNEY, P.A.**  
8621 E. Dr. Martin Luther King, Jr. Blvd.  
Tampa, Florida 33610  
Telephone: 813-579-3278  
Fax: 813-902-7612  
tcotney@trentcotney.com  
bbriggs@trentcotney.com  
courtfilings@trentcotney.com  
*Attorneys for Plaintiffs*

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.)

<p><b>I. (a) PLAINTIFFS</b>                  MASSARI, LUIS, on behalf of himself and those similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <b>Hillsborough</b>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  Benjamin Briggs, Trent Cotney, P.A.                  8621 E. Dr. Martin Luther King Jr. Blvd., Tampa, FL 33610                  (813) 579-3278</p>	<p><b>DEFENDANTS</b>                  GOLD RING CATERING, INC., a Florida corporation, and                  BACALLAO, JOSE A. and BACALLAO, SANDRA, individuals,</p> <p>County of Residence of First Listed Defendant <b>Hillsborough</b>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"><b>Citizen of This State</b></td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;"><b>Incorporated or Principal Place of Business In This State</b></td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td><b>Citizen of Another State</b></td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><b>Incorporated and Principal Place of Business In Another State</b></td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><b>Citizen or Subject of a Foreign Country</b></td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><b>Foreign Nation</b></td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	<b>Citizen of This State</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<b>Incorporated or Principal Place of Business In This State</b>	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<b>Citizen of Another State</b>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<b>Incorporated and Principal Place of Business In Another State</b>	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<b>Citizen or Subject of a Foreign Country</b>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<b>Foreign Nation</b>	<input type="checkbox"/> 6	<input type="checkbox"/> 6
<b>Citizen of This State</b>	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<b>Incorporated or Principal Place of Business In This State</b>	<input type="checkbox"/> 4	<input type="checkbox"/> 4														
<b>Citizen of Another State</b>	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<b>Incorporated and Principal Place of Business In Another State</b>	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
<b>Citizen or Subject of a Foreign Country</b>	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<b>Foreign Nation</b>	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

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

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**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 Multi-district Litigation

**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

Brief description of cause:  
 wage and hour in violation of FLSA

**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: 07/03/2017    SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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CLERK, U.S. DISTRICT COURT  
 MIDDLE DISTRICT OF FLORIDA  
 TAMPA, FLORIDA  
 2017 JUL -3 PM 3:29  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FLSA Class Action Filed Against Gold Ring Catering, Owners](#)

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