

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

CARLOS A. PEREIRA,
and other similarly-situated individuals,

Plaintiff,

v.

THE TURKISH BATH, INC.
and BORIS TUBERMAN, individually

Defendants.

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(b))

COMES NOW the Plaintiff CARLOS A. PEREIRA, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants THE TURKISH BATH, INC., and BORIS TUBERMAN individually, and alleges:

1. This is an action to recover money damages for unpaid wages under the laws of the United States. This Court has jurisdiction pursuant to Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 201-219, § 216(b), the Fair Labor Standards Act, “the Act”, (Section U.S.C. §216 for jurisdictional placement).
2. Plaintiff CARLOS A. PEREIRA is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant THE TURKISH BATH, INC., (hereinafter THE TURKISH BATH) is a Florida corporation, which has business in Miami-Dade County, Florida. Defendant, is and was engaged in interstate commerce.

4. The individual Defendant BORIS TUBERMAN was and is now, the owner/partner/director of Defendant Corporation THE TURKISH BATH. This individual was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)].
5. All the actions raised in this complaint took place in Miami/Dade County Florida, within the jurisdiction of this Court.

GENERAL ALLEGATIONS

6. Corporate Defendant THE TURKISH BATH is a luxurious spa located at 5445 Collins Avenue, Miami Beach 33140, where Plaintiff worked.
7. Defendants THE TURKISH BATH and BORIS TUBERMAN employed Plaintiff CARLOS A. PEREIRA from approximately August 29, 2016 to July 24, 2017, or 45 weeks.
8. Plaintiff was hired as non-exempt, hourly employee. Plaintiff had duties as a cleaning/maintenance employee. Plaintiff's regular wage rate was \$9.00 an hour.
9. While employed by Defendants THE TURKISH BATH and BORIS TUBERMAN, Plaintiff worked in excess of 40 hours in every week period, without receiving proper compensation.
10. Plaintiff worked a regular schedule. On Mondays, Tuesdays, Thursdays, and Fridays, Plaintiff worked from 9:00 AM to 5:00 PM (8 hours each day) that were paid at \$9.00 an hour. On these same days, Plaintiff continued his cleaning working from 5:00 PM to 10:00 PM (5 more hours), but he was paid at the rate of \$5.00 an hour; On Wednesdays, Plaintiff worked from 5:00 PM to 10:00 PM (5 hours), On Saturdays, Plaintiff worked from 9:00 AM to 5:00 PM, he was paid at \$9.00 an hour, but he did not work after 5:00 PM: and

Finally on Sundays, Plaintiff worked from 8:00 AM to 3:00 PM, he was paid \$9.00 an hour, but he did not work after 5:00 PM. Plaintiff worked a total of 72 hours every week. Plaintiff was not allowed to take bona fide lunch periods.

11. Plaintiff did not clock in and out, Defendants did not use any time keeping method, and Plaintiff was paid with paystubs that never reflected the real number of hours worked.
12. Therefore, every week Plaintiff worked 72 hours which constituted 32 overtime hours. Of those 32 overtime hours, 7 O/T hours were paid at the regular rate of \$9.00; the remaining 25 overtime hours were paid at the rate of \$5.00 an hour.
13. Defendants failed to pay Plaintiff for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
14. Plaintiff CARLOS A. PEREIRA seeks to recover unpaid overtime wages accumulated during all their time of employment, liquidated damages and any other relief as allowable by law.
15. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME AS TO ALL DEFENDANTS

16. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-15 above as if set out in full herein.

17. This action is brought by Plaintiff CARLOS A. PEREIRA and those similarly-situated employees, to recover from the Employer unpaid overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."
18. The employer THE TURKISH BATH, was engaged in interstate commerce within the meaning of the Fair Labor Standards Act, as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). The defendant is a luxury spa, located at Miami Beach, serving mostly tourists. Defendant has more than two employees directly and recurrently engaged in interstate commerce. The Employer/Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida. Upon information and belief, the annual gross revenue of the Employers/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.
19. Plaintiff was employed by an enterprise engage in interstate commerce. Plaintiff was a cleaning/maintenance employee. Through his daily activities, Plaintiff and other employees similarly situated, regularly and recurrently participated in interstate commerce, by maintaining facilities dedicated mostly to serve tourists, and by handling and working

with goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

20. Plaintiff's wage rate during the relevant period of employment was \$9.00 an hour.
21. While employed by Defendant THE TURKISH BATH, Plaintiff worked Seven days per week, a total of 72 hours weekly. Plaintiff did not take lunch breaks.
22. Plaintiff worked in excess of 40 hours every week period. However, Plaintiff did not receive any additional compensation for overtime hours. Plaintiff was not paid for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
23. Plaintiff did not clock in and out. Defendant did not keep any time-keeping method to track the hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid weekly for approximately 72 hours, but at the incorrect rate. Plaintiff was provided with paystubs without basic information about total of hours worked, wage rate, employment taxes. etc.
24. Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to overtime and minimum wage payments. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.
25. The records, if any, concerning the number of hours actually worked by Plaintiff and those similarly situated, and the compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant did not maintain accurate time records of hours worked by Plaintiff and other employees.
26. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

27. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid overtime wages is as follows:

* Please note that these amounts are based on a preliminary calculation and that these figures could be subject to modifications as discovery could dictate.

a. Total amount of alleged unpaid O/T wages:

Ten Thousand Nine Hundred Eighty Dollars and 00/100 (\$10,980.00)

b. Calculation of such wages:

Total weeks of employment: 45 weeks
Total relevant weeks of employment: 45 weeks
Total weeks with overtime hours: 45 weeks
Total hours worked: 72 hours every week
Total overtime hours: 32 O/T hours
Regular rate: \$9.00 an hour x 1.5=\$13.50
O/T rate: \$13.50

1.- Calculation for 7 overtime hours paid at \$9.00 an O/T hour x 45 weeks

Regular rate: \$9.00 x 1.5 = \$13.50 O/T rate-\$9.00 paid=\$4.50 half-time difference
Half-time difference \$4.50 x 7 O/T hours=\$31.50 weekly x 45 weeks=\$1,417.50

2.- Calculation for 25 overtime hours paid at \$5.00 an O/T hour x 45 weeks

Regular rate: \$9.00 x 1.5 = \$13.50 O/T rate-\$5.00 paid=\$8.50 difference
Difference \$8.50 x 25 O/T hours=\$212.50 weekly x 45 weeks=\$9,562.50

Total O/T #1, and #2: \$10,980.00

Nature of wages (e.g. overtime or straight time):

This amount represents unpaid overtime wages.

28. The Employer/Defendant THE TURKISH BATH failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the

Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.

29. Defendant THE TURKISH BATH knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employee's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.
30. At times mentioned, individual Defendant BORIS TUBERMAN was and is now, the owner and manager of THE TURKISH BATH. Defendant BORIS TUBERMAN was an employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)]. This individual acted directly in the interests of THE TURKISH BATH in relation to its employees including Plaintiff and others similarly situated. Defendant BORIS TUBERMAN had full financial and operational control of the business, provided Plaintiff with his work schedule and is jointly liable for Plaintiff's damages.
31. Defendants THE TURKISH BATH, and BORIS TUBERMAN willfully and intentionally refused to pay Plaintiff overtime wages at the rate of time and one-half his regular rate, as required by the law of the United States and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendants as set forth above.
32. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CARLOS A. PEREIRA and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff CARLOS A. PEREIRA and other similarly-situated individuals and against the Defendants THE TURKISH BATH, and BORIS TUBERMAN on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff CARLOS A. PEREIRA actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty weekly, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff CARLOS A. PEREIRA and those similarly-situated demand trial by jury of all issues triable as of right by jury.

DATED: July 31, 2017

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 446-1500
Facsimile: (305) 446-1502
zep@thepalmalawgroup.com
Attorney for Plaintiff

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

CARLOS A. PEREIRA

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500, Miami, FL 33156
Tel: (305) 446-1500

DEFENDANTS

THE TURKISH BATH, INC. and and BORIS TUBERMAN

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

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

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, 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
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO
(See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
29 U.S.C.
LENGTH OF TRIAL via 3 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: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD /s/ Zandro E. Palma, Esq.

DATE July 31, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CARLOS A. PEREIRA

Plaintiff

v.

THE TURKISH BATH, INC. and and BORIS TUBERMAN

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BORIS TUBERMAN

5445 COLLINS AVE
PAV. 5
MIAMI BEACH, FL 33140

A lawsuit has been filed against you.

Within 21 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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

CARLOS A. PEREIRA

Plaintiff

v.

THE TURKISH BATH, INC. and and BORIS TUBERMAN

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) THE TURKISH BATH, INC. through its Registered Agent:

TUBERMAN-SOLON, DORINA
5445 COLLINS AVE
PAV. 5
MIAMI BEACH, FL 33140

A lawsuit has been filed against you.

Within 21 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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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: _____

Signature of Clerk or Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Miami Beach Luxury Spa Soaked with Unpaid Overtime Lawsuit](#)
