

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

JOSE A. PEREZ, ARAYAN GARCES, and all
others similarly situated under 29 U.S.C. 216(B),

Plaintiffs,

v.

KRISPY KREME OF SOUTH FLORIDA LLC,
a Florida limited liability company,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, JOSE A. PEREZ and ARAYAN GARCES, on behalf of themselves and all others similarly situated under 29 U.S.C. 216(B), through undersigned counsel, file this Complaint against Defendant, KRISPY KREME OF SOUTH FLORIDA LLC (“Defendant”) and allege as follows:

INTRODUCTION

1. This is an action by Plaintiffs against Defendant, their former employer, for unpaid overtime pursuant to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. § 201 et seq. Plaintiffs seek damages and reasonable attorney’s fees, together with other relief.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because this case arises under the Fair Labor Standards Act 29 U.S.C. §§ 201-216 (“FLSA”).

3. Venue is proper in the Southern District of Florida, pursuant 28 U.S.C. § 1391(b) because the claims arose here and the Defendant is subject to personal jurisdiction here.

THE PARTIES

4. Plaintiffs, JOSE A. PEREZ (“PEREZ”) and ARAYAN GARCES (“GARCES”) are citizens and residents of Miami-Dade County, Florida.

5. Defendant, KRISPY KREME OF SOUTH FLORIDA LLC is a Florida limited liability company formed and existing under the laws of the State of Florida and at all times during Plaintiff’s employment, was an employer as defined by 29 U.S.C. §203.

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

7. At all material times relevant to this action (October 2014 - present), Defendant, made gross earnings of at least \$500,000.00 annually.

8. At all material times relevant to this action (October 2014 - present), Defendant, had two or more employees engaged in interstate commerce, producing goods for commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce.

9. At all material times relevant to this action (October 2014 - present), Defendant had two or more employees who routinely ordered materials or supplies from out of state vendors.

10. At all material times relevant to this action (October 2014 - present), Defendant had two or more employees who used the telephone and/or computers to place and accept business calls with out of state customers on a daily basis in the normal course of its business.

11. PEREZ has been an employee of Defendant since before October 2014 and is currently an employee of Defendant. During his entire employment with Defendant has been individually engaged in commerce as defined by 29 U.S.C. §§206(a) and 207(a)(1).

12. GARCES was an employee of Defendant from before October 2014 until July 2017 and was individually engaged in commerce as defined by 29 U.S.C. §§206(a) and 207(a)(1).

13. Upon information and belief, the records, to the extent that any exist, concerning the number of hours worked and amounts paid to Plaintiffs are in the possession, custody and control of Defendant.

14. All of Defendants' actions alleged in this Complaint occurred in Florida.

GENERAL FACTUAL ALLEGATIONS PERTAINING TO PLAINTIFFS

15. Plaintiffs PEREZ and GARCES were employed by Defendant as truck drivers.

16. Plaintiffs transported doughnuts and other food-items for Defendant between locations in the state of Florida.

17. Plaintiffs' routes were limited to in-state routes within Florida.

18. Plaintiffs were compensated by Defendant on a commission basis based on the amount of doughnuts and other food-items they transported during the week.

19. Thus, Plaintiffs' regular rate of pay varied from week-to-week depending on the amount of doughnuts and other food-items they transported during the week.

20. During their employment with Defendant both Plaintiffs customarily worked in excess of forty (40) hour per week.

21. From October 2014 to sometime in the Spring of 2016, when Defendant changed its payroll practices, Defendant failed to compensate Plaintiffs at the rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours per week.

22. During their employment with Defendant Plaintiffs worked an average of approximately SIXTY-FIVE (65) hours per week.

23. Plaintiffs were required to "clock in" to record their hours and thus Defendant should have an accurate record of the hours worked by Plaintiffs.

24. Indeed, to the extent that documentation concerning the number of hours worked by Plaintiffs and the compensation actually paid to Plaintiffs exists, such documentation is in the

possession and custody and control of Defendant.

25. Plaintiffs have retained the law firm of THE LAW OFFICES OF NEIL D. KODSI to represent them in this matter and have agreed to pay the law firm a reasonable fee for its services.

COUNT I - FLSA OVERTIME WAGE VIOLATION

26. Plaintiffs reallege and incorporate paragraphs 1 through 25, as if fully set forth herein.

27. Throughout Plaintiffs' employment, Defendant repeatedly and willfully violated Section 7 and Section 15 of FLSA by failing to compensate Plaintiffs at a rate not less than one and one-half times the regular rate at which they were employed for workweeks longer than forty (40) hours.

28. Defendant did not act in good faith or reliance upon any of the following in formulating its decision to improperly compensate Plaintiffs their appropriate overtime rate for hours worked in excess of forty (40) hours per week: (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.

WHEREFORE, Plaintiffs demand a judgment against Defendant for the following:

- (a) Unpaid overtime wages found to be due and owing;
- (b) An additional equal amount equal to the overtime wages found to be due and owing as liquidated damages;
- (c) Prejudgment interest in the event liquidated damages are not awarded;
- (d) A reasonable attorney's fee and costs; and
- (e) Such other relief as the Court deems just and equitable.

COUNT II – VIOLATION OF 29 U.S.C. §216(b)
STATUTORY COLLECTIVE ACTION FOR FAILURE TO PAY OVERTIME

29. Plaintiffs reallege and incorporate paragraphs 1 through 28, as if fully set forth herein.

30. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendant has employed several other similarly situated employees like Plaintiffs who have not been paid overtime for work performed in excess of 40 hours weekly from the filing of this complaint back three years.

31. Plaintiffs bring this count on behalf of themselves and other employees and former employees of Defendant similarly situated for overtime compensation and other relief pursuant to the FLSA.

32. The additional persons who may become Plaintiffs in the action are nonexempt employees of Defendant who worked and, in some instances, continue to work in excess of forty (40) hours during a work week and who were not paid one and one-half times their regular rates of pay for the hours they worked in excess of forty hours as mandated by 29 U.S.C. §207.

33. At all times material hereto, Defendant failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiffs by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees as if they were exempt from coverage under 29 U.S.C. §§201 through 219, disregarding the fact that they were not exempt.

34. Based upon information and belief, the employees and former employees of Defendant similarly situated to Plaintiffs were paid straight time and expected to work in excess of forty (40) hours per week without being paid at the rate of one and one-half times their regular rates of pay for those hours exceeding forty (40) hours per week.

35. Records, if any, concerning the actual number of hours worked by Defendant's employees and former employees and the actual compensation paid to Defendant's employees and former employees similarly situated to Plaintiffs are in the possession, custody and control of Defendant.

36. All similarly situated employees are owed their overtime rates for each overtime hour that they worked, but were not paid at the statutory rate of one and one-half times their regular rates of pay.

37. Due to the intentional, willful and unlawful acts of Defendant, all similarly situated employees have suffered damages and will continue to suffer damages and incur attorney's fees and costs.

38. As a direct and proximate result of Defendant's willful disregard of the FLSA, all similarly situated employees are entitled to liquidated damages in an equal amount to the amount by which each similarly situated employee or former employee has been damaged.

WHEREFORE, those similarly situated employees and former employees who have or will opt into this action demand that judgment be entered against Defendant:

- a. Declaring, pursuant to 29 U.S.C. §207, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiffs overtime compensation due them for hours worked by them but for which they have not been properly compensated.
- c. Awarding Plaintiffs liquidated damages;
- d. Awarding Plaintiffs reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b).
- e. Awarding Plaintiffs pre-judgment interest; and

f. Ordering any other further relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to the provisions of Rule 38(b) of the Federal Rules of Civil Procedure, PLAINTIFF demands a trial by jury on all issues so triable in this matter.

DATED: October 18, 2017

/s/ Neil D. Kodsi
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Counsel for Plaintiffs

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

I. (a) PLAINTIFFS Jose A. Perez, Arayan Garces and all others **DEFENDANTS** Krispy Kreme of South Florida LLC
similarly situated under 29 U.S.C. 216(b)

(b) County of Residence of First Listed Plaintiff **Miami-Dade** County of Residence of First Listed Defendant
(EXCEPT IN U.S. PLAINTIFF CASES) (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) **Attorneys (If Known)**
The Law Offices of Neil D. Kodsí, 2 S. University Drive, Suite 304, Plantation, FL 33324 - phone no. 786-464-0841

(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 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)

- Citizen of This State PTF DEF 1 1 Incorporated or Principal Place of Business In This State PTF DEF 4 4
- Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
- Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

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

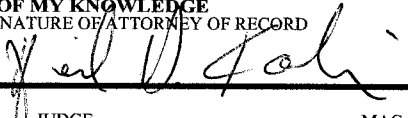
- CONTRACT**
 - 110 Insurance
 - 120 Marine
 - 130 Miller Act
 - 140 Negotiable Instrument
 - 150 Recovery of Overpayment & Enforcement of Judgment
 - 151 Medicare Act
 - 152 Recovery of Defaulted Student Loans (Excl. Veterans)
 - 153 Recovery of Overpayment of Veteran's Benefits
 - 160 Stockholders' Suits
 - 190 Other Contract
 - 195 Contract Product Liability
 - 196 Franchise
- REAL PROPERTY**
 - 210 Land Condemnation
 - 220 Foreclosure
 - 230 Rent Lease & Ejectment
 - 240 Torts to Land
 - 245 Tort Product Liability
 - 290 All Other Real Property
- PERSONAL INJURY**
 - 310 Airplane
 - 315 Airplane Product Liability
 - 320 Assault, Libel & Slander
 - 330 Federal Employers' Liability
 - 340 Marine
 - 345 Marine Product Liability
 - 350 Motor Vehicle
 - 355 Motor Vehicle Product Liability
 - 360 Other Personal Injury
 - 362 Personal Injury - Med. Malpractice
 - 440 Other Civil Rights
 - 441 Voting
 - 442 Employment
 - 443 Housing/Accommodations
 - 445 Amer. w/Disabilities - Employment
 - 446 Amer. w/Disabilities - Other
 - 448 Education
- TORTS**
 - 365 Personal Injury - Product Liability
 - 367 Health Care/Pharmaceutical Personal Injury Product Liability
 - 368 Asbestos Personal Injury Product Liability
- PERSONAL PROPERTY**
 - 370 Other Fraud
 - 371 Truth in Lending
 - 380 Other Personal Property Damage
 - 385 Property Damage Product Liability
- PRISONER PETITIONS**
 - Habeas Corpus:**
 - 463 Alien Detainee
 - 510 Motions to Vacate Sentence
 - Other:**
 - 530 General
 - 535 Death Penalty
 - 540 Mandamus & Other
 - 550 Civil Rights
 - 555 Prison Condition
 - 560 Civil Detainee - Conditions of Confinement
- FORFEITURE/PENALTY**
 - 625 Drug Related Seizure of Property 21 USC 881
 - 690 Other
- LABOR**
 - 710 Fair Labor Standards Act
 - 720 Labor/Mgmt. Relations
 - 740 Railway Labor Act
 - 751 Family and Medical Leave Act
 - 790 Other Labor Litigation
 - 791 Empl. Ret. Inc. Security Act
- IMMIGRATION**
 - 462 Naturalization Application
 - 465 Other Immigration Actions
- BANKRUPTCY**
 - 422 Appeal 28 USC 158
 - 423 Withdrawal 28 USC 157
- PROPERTY RIGHTS**
 - 820 Copyrights
 - 830 Patent
 - 835 Patent - Abbreviated New Drug Application
 - 840 Trademark
- SOCIAL SECURITY**
 - 861 HIA (1395ff)
 - 862 Black Lung (923)
 - 863 DIWC/DIWW (405(g))
 - 864 SSID Title XVI
 - 865 RSI (405(g))
- FEDERAL TAX SUITS**
 - 870 Taxes (U.S. Plaintiff or Defendant)
 - 871 IRS—Third Party 26 USC 7609
- OTHER STATUTES**
 - 375 False Claims Act
 - 376 Qui Tam (31 USC 3729 (a))
 - 400 State Reapportionment
 - 410 Antitrust
 - 430 Banks and Banking
 - 450 Commerce
 - 460 Deportation
 - 470 Racketeer Influenced and Corrupt Organizations
 - 480 Consumer Credit
 - 490 Cable/Sat TV
 - 850 Securities/Commodities/Exchange
 - 890 Other Statutory Actions
 - 891 Agricultural Acts
 - 893 Environmental Matters
 - 895 Freedom of Information Act
 - 896 Arbitration
 - 899 Administrative Procedure Act/Review or Appeal of Agency Decision
 - 950 Constitutionality of State 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 Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO **JUDGE:** b) Related Cases YES NO **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):
Sections 7 and 15 of the FLSA, 29 USC 216(b)
LENGTH OF TRIAL via _____ 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 \$50,000.00** CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE: October 18, 2017
SIGNATURE OF ATTORNEY OF RECORD: 
FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ IFF _____ 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: [Former Truck Drivers Claim Krispy Kreme Did Not Pay Proper Overtime Between 2014-2016](#)
