

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2017 MAR 14 AM 11:19

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

GANEL POUDY, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CASE NO.: 2:17-cv-148-FM-99CM

TEXAS ROADHOUSE OF FORT
MYERS, FL, LLC, a Foreign Profit
Corporation.

Defendant.

_____ /

COMPLAINT

COMES NOW Plaintiff, GANEL POUDY, (hereinafter "Plaintiff") on behalf of himself, other employes and former employees similarly situated, by and through the undersigned counsel, and files this Complaint against Defendant, TEXAS ROADHOUSE OF FORT MYERS, FL, LLC doing business as Texas Roadhouse (hereinafter "Defendant" or "TEXAS ROADHOUSE") and states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended, (29 U.S.C. §201, et seq., hereinafter called the "FLSA") to recover unpaid minimum and overtime wages, an equal amount of liquidated damages and reasonable attorney's fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

PARTIES

3. At all times material hereto, Plaintiff, GANEL POU DY, is and was a resident of Lee County, Florida.

4. At all times material hereto, TEXAS ROADHOUSE was and continues to be a Foreign Profit Corporation. Further, at all times material hereto, TEXAS ROADHOUSE was, and continues to be, engaged in business in Florida, with a principle place of business in Lee County, Florida.

5. At all times material hereto, Plaintiff was “engaged in commerce” within the meaning of §206 of the FLSA.

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

7. At all times material hereto, Defendant was the “employer” within the meaning of FLSA.

8. Defendant was and continues to be an “employer” within the meaning of FLSA.

9. At all times material hereto, Defendant TEXAS ROADHOUSE was and continues to be “enterprises engaged in commerce” within the meaning of FLSA.

10. At all times material hereto, Defendant TEXAS ROADHOUSE was and continues to be an enterprises engaged in the “production of goods for commerce” within the meaning of FLSA.

11. Based upon information and belief, the annual gross revenue of Defendant TEXAS ROADHOUSE is in excess of \$500,000.00 per annum during the relevant time periods.

12. At all times material hereto, Defendant has two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

13. At all times material hereto, the Plaintiff was “engaged in commerce” and subject to individual coverage of the FLSA.

14. At all times material hereto, the Plaintiff was engaged in the “production of goods for commerce” and subject to individual coverage of the FLSA.

15. The additional persons who may become Plaintiffs in this action are/were “server” employees of Defendant, who held similar positions to Plaintiff and who, (1) did not earn minimum wages for each hour worked; and/or (2) performed work off the clock.

16. At all times material hereto, the work performed by Plaintiff was directly essential to the business performed by Defendant.

STATEMENT OF FACTS

17. From on or about July 24, 2014 until January 12, 2017, Plaintiff worked for Defendant as a non-exempt “prep cook.”

18. Defendant has violated Title 29 U.S.C. §206 from at least July 24, 2014, and continuing through January 12, 2017 in that Plaintiff was not compensated for all hours worked.

19. At various material times hereto (2014-2017), Plaintiff worked off the clock and was not paid for all hours worked.

20. At various material times hereto (2014-2017), Plaintiff was not paid minimum wage for each hour worked.

21. From at least July 24, 2014, and continuing through January 12, 2017, Defendant failed to compensate Plaintiff for all hours worked as required by the FLSA.

22. Defendant has failed to maintain proper time records as mandated by the FLSA.

23. Plaintiff has retained the BERKE LAW FIRM, P.A. to represent him in the litigation and has agreed to pay the firm a reasonable fee for its services.

COUNT I
VIOLATION OF 29 U.S.C. §206 MINIMUM WAGES

24. Plaintiff, and others similarly situated, realleges and incorporates paragraphs 1 through 23 of the Complaint as if fully set forth herein.

25. From July 24, 2014, and continuing through January 12, 2017 Plaintiff performed work off the clock was not compensated at least minimum wages for every hour worked.

26. Plaintiff, and others similarly situated, was entitled to be paid minimum wages for each hour worked during his employment with Defendant.

27. Since then, Plaintiff has demanded compensation for all hours worked, but Defendant has refused and/or failed to compensate him for same. As a result of Defendant's actions in this regard, Plaintiff has not been paid the minimum wages for each hour worked during multiple weeks of employment with Defendant.

28. Due to intentional, willful, and unlawful acts of Defendant, Plaintiff, and others similarly situated, suffered and continues to suffer damages and lost compensation for minimum wages for multiple weeks of work contrary to 29 U.S.C. §206.

29. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

30. At all times material hereto, Defendant failed to comply with Title 29 and United States Department of Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiff by virtue of the management policy, plan or decision that intentionally provided for payment of minimum wages.

31. Based upon information and belief, the employees and former employees of Defendant similarly situated to Plaintiff were not paid proper overtime for hours worked in excess of forty (40) in one or more workweeks because Defendant failed to properly pay Plaintiff minimum wages for every hour worked.

32. As a direct and proximate result of Defendant's deliberate underpayment of wages, Plaintiff has been damaged in the loss of minimum wages for one or more weeks of work with Defendant.

WHEREFORE, Plaintiff, GANEL POUUDY, on behalf of himself and all proposed members of the FLSA representative action pray for relief as follows:

- a. Declaring, pursuant to 28 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the minimum wage provisions of the FLSA;
- b. Awarding Plaintiff the loss of minimum wages in the amount due for time worked;
- c. Awarding Plaintiff liquidated damages in an amount equal to the loss of minimum wages award;
- d. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- e. Awarding Plaintiff pre-judgment interest; and

- f. Issue an Order, as soon as is practicable, authorizing Plaintiff to send notice of the instant lawsuit to all similarly situated non-exempt employees employed by Defendant within the past three years.

Respectfully submitted this 13th day of March 2017.

BERKE LAW FIRM, P.A.

By: /s/ Bill B. Berke
Bill B. Berke, Esq.
Florida Bar No. 0558011
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4423 Del Prado Boulevard S.
Cape Coral, FL 33904
Telephone: (239) 549-6689
Attorney for Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

FILED

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

Ganel Poudy, on behalf of himself and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bill B. Berke, Esq., BERKE LAW FIRM, P.A., 4423 Del Prado Blvd. S., Cape Coral, Florida 33904 (239) 549-6689

DEFENDANTS

TEXAS ROADHOUSE OF FORT MYERS, MAR 14, 2017, AMU-18 Corporation,

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)

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

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)

<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	<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	<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 <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 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (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))	<input type="checkbox"/> 375 False Claims Act <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
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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 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Fair Labor Standards Act, as amended 29 U.S.C. §201., et seq.
 Brief description of cause:
 Unpaid wages

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: 03/13/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Bill B. Berke

FOR OFFICE USE ONLY

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

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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: [Texas Roadhouse of Fort Myers Hit with Unpaid Overtime Lawsuit](#)
