

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Harold W. Butler and Germaine Brisbane,
On Behalf of Themselves and Others
Similarly Situated,

Plaintiffs,

v.

Fama Entertainment LLC, D/B/A Boone's
Bar, and Ahmed F. Hassan, individually,

Defendants.

CIVIL ACTION NO.: 2:16-cv-00293-DCN

COLLECTIVE ACTION COMPLAINT
(Jury Trial Requested)

Plaintiffs Harold W. Butler and Germaine Brisbane, by way of the Complaint in the above-captioned matter, alleges and shows unto this Honorable Court the following:

NATURE OF CLAIM

1. Plaintiffs bring this lawsuit seeking recovery against Defendants for Defendants' violation of the Fair Labor Standards Act, as amended (the "FLSA" or the "Act"), 29 U.S.C. §201 et. seq.

2. The Plaintiffs bring this action as a collective action pursuant to 29 U.S.C. §216(b) on behalf of themselves other similarly situated employees of the Defendants who suffered damages as a result of Defendants' violations of the FLSA.

3. Plaintiffs also includes individual causes of action under the South Carolina Payment of Wages Act, S.C. Code Ann § 41-10-10, et seq.

PARTIES, JURISDICTION AND VENUE

4. Plaintiff Harold W. Butler is a citizen and a resident of Charleston County, South Carolina.

5. Plaintiff Germaine Brisbane is a citizen and a resident of Charleston County, South Carolina.

6. Defendant, Fama Entertainment LLC, is a for-profit limited liability corporation, organized and existing under the laws of South Carolina, and is registered with the Secretary of State doing business under the trade name Boone's Bar.

7. Defendant, Ahmed F. Hassan, is a citizen and resident of Charleston County. Defendant Hassan employs persons such as Plaintiffs and other similarly situated employees to work on his behalf in providing labor for his benefit.

8. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in Charleston Division of this Court. Additionally, the unlawful labor practices and policies giving rise to Plaintiffs' claims were committed in the Charleston Division of this Court.

9. This Court has jurisdiction of the state claims alleged herein, and of the FLSA claim per 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b).

10. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over Plaintiffs' pendent claims, which are brought pursuant to the statutory and common law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

11. At all times pertinent to this Complaint, Defendants were an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the Act, 29 U.S.C. § 203(r) and 203(s).

12. Based upon information and belief, the annual gross sales volume of the Defendants' business was in excess of \$500,000.00 per year at all times material hereto. Alternatively, the Plaintiffs worked in interstate commerce so as to fall within the protections of the FLSA.

FACTS

13. Defendant, Fama Entertainment, LLC, doing business as Boone's Bar, is located at 345 King Street. Charleston, SC 29401.

14. Boone's Bar is a restaurant, which serves alcohol beverages along with burgers, wings, salads and appetizers.

15. Defendant Ahmed F. Hassan is an owner and manager of Boone's Bar and Fama Entertainment, LLC. Defendant Hassan acts directly and/or indirectly in the interest of Defendants in relation to Plaintiffs. Defendant Hassan operated, Boone's Bar and regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of such business. By virtue of such control and authority Mr. Hassan is an employer of Plaintiffs as such term is defined by the Act. 29 U.S.C. §201 et seq.

16. Plaintiff Harold W Butler has been employed by the Defendants from approximately March of 2014 until the present.

17. Plaintiff Germaine Brisbane was employed by the Defendants from approximately January 2012 until October 2015.

18. Plaintiff Butler works for the Defendants as cook and a bar back.

19. Plaintiff Brisbane worked for the Defendants as cook and a bouncer.

20. The primary job duties of a cook include preparing customers' food orders and cleaning the kitchen.

21. The primary duties of bar back include stocking the coolers with beverages and ice along with making sure the bartenders has the items needed to serve the customers.

22. The primary duties of a bouncer included checking identification at the door, insuring there were no physical confrontations between patrons and cleaning and closing the bar.

23. Plaintiffs usually worked from 10:00 a.m. to 4:00 p.m. as cooks. Plaintiff Butler also regularly worked and from 7 p.m. to 2:00 a.m. as a bar back. Plaintiff Brisbane also regularly worked and from 9:30 p.m. to 2:30 a.m. as a bouncer.

24. Plaintiffs and similarly situated employees had an employment agreement where Defendants agreed to Plaintiff an hourly wage of \$10.00 for all hours worked.

25. Some weeks Defendants would reduce Plaintiffs' and other similarly situated employees hourly wage to \$9.00 an hour.

26. Some weeks Defendants would pay Plaintiff Butler a weekly salary of four hundred and fifty dollars (\$450.00).

27. Defendants did not provide Plaintiffs with written notice in advance of the deduction in wages.

28. The Defendants engaged in the practice of "time shaving" whereby they reduced their labor costs by deleting some of the time Plaintiffs and other similarly situated employees worked in violation of the FLSA and SCWPA. These reductions resulted in Plaintiffs as well as similarly situated employees being shorted on straight time pay and overtime pay.

29. During some workweeks Plaintiffs time was shaved by as much as three (3) hours.

30. Plaintiffs regularly worked over forty five (45) hours a week. Plaintiffs frequently did not receive overtime compensation at time and half of their regular rate of pay.

31. Plaintiffs were non-exempt employees and were entitled to overtime pay when they worked more than forty (40) hours a week.

32. Plaintiffs' job duties did not include, hiring or firing employees, interviewing or training of employees, setting and adjusting employee rates of pay.

33. Plaintiffs are entitled to liquidated damages in an amount equal to the amount of the unpaid wages and overtime compensation owed to them by the Defendant pursuant to 29 U.S.C. § 216. Plaintiffs are entitled to recover reasonable attorney's fees and costs of this action.

34. At all times relevant to this Complaint, Plaintiffs were good and faithful employee of Defendants and performed the essential functions of his job in an exceptional and competent manner.

FIRST CAUSE OF ACTION
(FLSA Failure to Pay Overtime Wages)
(Individual and Collective Action)

35. Plaintiffs, on behalf of themselves and all other similarly situated employees, re-allege and incorporate by reference all preceding paragraphs as if specifically set forth herein.

36. Plaintiffs as well as other cooks, bouncers and bar backs worked for more than forty (40) hours during a workweek during their employment with Defendants.

37. Defendants failed to pay Plaintiffs and other cooks, bouncers and bar backs at the rate of one-and-a-half times their normal rate of pay for all hours worked in excess of forty (40) hours in a workweek as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a).

38. Defendants also failed to pay Plaintiffs and the members of the Plaintiffs' class for all compensable time for which Plaintiffs provided work for the benefit of Defendants.

39. Plaintiffs and the members of the Plaintiffs' class are entitled to back wages at the rate of one-and-a-half times their regular rate of pay for all overtime hours worked in excess of forty (40) hours per week, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

40. Plaintiffs and the members of the Plaintiffs' class are also entitled to an award of back pay at their regular hourly rate or their overtime rate, as appropriate, as compensation for all time spent in working for Defendants, which was wrongfully excluded by Defendants in calculating their compensable time.

41. The failure of Defendants to compensate Plaintiffs for overtime work and for as required by the FLSA was knowing, willful, intentional, and done in bad faith.

42. Plaintiffs and the members of the Plaintiffs' class are also entitled to liquidated damages equal to the amount of overtime compensation and unpaid compensation due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

43. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

FOR A SECOND CAUSE OF ACTION
(SCPWA)
(Individual and Class Action)

44. Plaintiffs, on behalf of themselves and all similarly situated employees, reallege and incorporate by reference all preceding paragraphs as if they were set forth herein verbatim.

45. Each Defendant is an "employer" as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

46. Defendants employed Plaintiffs and the members of the Plaintiffs' class within the State of South Carolina.

47. Defendants owe Plaintiffs and the members of the Plaintiffs' class "wages" as defined in Section 41-10-10(2) of the Act, to compensate them for labor rendered to Defendants, as promised to Plaintiffs and the members of the Plaintiffs' class and as required by law, including overtime pay required by the FLSA.

48. Defendants did not pay Plaintiffs for all hours worked for the benefit of Defendants.

49. Defendants have failed to pay Plaintiffs and the members of the Plaintiffs' class all wages due, as required by Sections 41-10-40 and -50 of the Act.

50. Pursuant to S.C. Code § 41-10-80(C), Plaintiffs and the members of the Plaintiffs' class are entitled to recover in this action an amount equal to three times the full amount of their unpaid wages, or their wrongfully deducted wages, plus costs and reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs individually and on behalf of all others similarly situated individuals who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiff's unpaid back wages at the applicable overtime rates;
- c. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;

- d. Liquidated damages in an amount equivalent to the overtime damages owed to Plaintiff;
- e. Treble damages pursuant to the South Carolina Payment of Wages Act;
- f. Injunctive relief to require Defendant to record, report and preserve records sufficient to enable Plaintiff to determine his wages, hours and conditions and practices of employment, including practices regarding deductions and payment and nonpayment of overtime as mandated by the FLSA.
- g. Attorney's fees and costs;
- h. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiffs Butler and Brisbane on their behalf and on behalf of all other similarly situated employees hereby demand a trial by jury.

Respectfully submitted,
s/ Marybeth Mullaney
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Attorney for Plaintiff
January 29, 2016
Mount Pleasant, South Carolina.