

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ELIO CONSTANZA, and all
others similarly situated,

Plaintiffs,

vs.

24 HOUR FITNESS USA, INC.,

Defendant.

COMPLAINT AND JURY TRIAL DEMAND

Plaintiff ELIO CONSTANZA (“Plaintiff”), on behalf of himself and all others similarly situated, sues Defendant 24 HOUR FITNESS USA, INC. (“Defendant”), and allege as follows:

1. This is a collective action for unlawful failure to pay overtime as required by the Fair Labor Standards Act, 29 U.S.C. §207(a) (“FLSA”), and its implementing regulations. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. §216(b) and 28 U.S.C. §1331.

2. This is an action for declaratory relief, back pay and liquidated damages, attorney’s fees, and table costs pursuant to 29 U.S.C. §216(b), for Defendant’s willful failure to pay overtime to Plaintiff and all others similarly situated, in the course of their employment with Defendant.

3. Venue is proper in the Southern District of Florida because a substantial portion of the events forming the basis of this suit occurred in the Southern District of Florida.

4. Plaintiff at all relevant times was, and still is, a resident of Miami-Dade County, Florida, and are *sui juris*.

5. Defendant is, and at all relevant times was, a California corporation doing business in Miami-Dade County, Florida.

6. At all relevant times Defendant was, and still is, an “employer” under the FLSA, 29 U.S.C. §§203(r) and 203(s), in that it was an enterprise engaged in interstate commerce or in the production of goods for commerce, or employed employees who engaged in interstate commerce or the production of goods for commerce, or had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person. Defendant had at all relevant times annual gross sales in excess of \$500,000.00.

7. At all relevant times Defendant operated an enterprise within the meaning of the FLSA.

8. At all relevant times Plaintiff was an individual employee who was engaged in commerce as required by the FLSA. Like Plaintiff, the members of the Plaintiff Class as described herein below were employees engaged in commerce or in the production of goods for commerce in performing their duties for Defendant.

9. Plaintiff files this case as an “opt-in” class action as specifically allowed by 29 U.S.C. §216(b).

10. The class that the Plaintiff seeks to represent may be described as follows:

All current and former employees of Defendant 24 Hour Fitness USA, Inc. who worked as Fitness Managers and (1) who worked at any location in the United States that was owned, operated and/or acquired by Defendant during the class period, and (2) who claim they were not paid for overtime hours worked and seek payment for such hours.

11. Plaintiff seeks to represent only those members of the above-described group who, after appropriate notice of their ability to opt-in to this action, have provided consent in writing to be represented by Plaintiff’s counsel as required by 29 U.S.C. §216(b).

12. Those persons who choose to opt in, hereinafter referred to as the "Plaintiff Class", will be listed on subsequent pleadings, and copies of the written consents to sue will be incorporated herein by reference.

13. Plaintiff contends that this action is appropriate for class action status because Defendant has acted in the same manner with regard to all members of the Plaintiff Class.

14. The members of the Plaintiff Class are similarly situated to Plaintiff and are owed overtime wages for the same reasons as Plaintiff. These employees and former employees should be notified of this case and given the opportunity to join this suit.

15. At all relevant times Defendant has been subject to the requirements of the FLSA.

16. For purposes of this action, the "relevant period" is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

17. Defendant owns and operates a nationwide chain of gymnasiums and health clubs.

18. Defendant employed Plaintiff as a "Fitness Manager" to perform personal fitness training and to sell personal training packages in its gymnasiums and/or health clubs. Plaintiff was paid on an hourly basis for his personal training services and also was paid commissions based on the amount of fitness training packages he sold.

19. As Fitness Manager, the majority of Plaintiff's duties involved providing personal fitness training services to health club members and to supervise the other club personal fitness trainers.

20. As Fitness Manager, Plaintiff routinely worked more than forty (40) hours per week for Defendant and reported his overtime hours accurately.

21. Defendant, however, refused to pay Plaintiff for more than forty (40) hours per work week. Defendant in fact instructed Plaintiff's supervisor to alter the records of Plaintiff's hours of work to make it appear that Plaintiff did not work overtime.

22. Defendant paid Plaintiff an hourly wage plus commissions but paid no compensation for any hours worked after the first forty in each work week.

23. Defendant failed to accurately record all of the hours in which Plaintiff worked.

24. Plaintiff was at all relevant times a non-exempt employee under the FLSA.

25. Defendant has not made a good faith effort to comply with the FLSA. Rather, Defendant has knowingly, willingly, and with reckless disregard carried out its illegal pattern and practice of failing to pay overtime to Plaintiff and all other similarly situated members of the Plaintiff Class.

26. Other employees in the same positions as Plaintiff have been victimized by Defendant's pattern, practice, and policy of refusing to pay overtime in violation of the FLSA.

27. Plaintiff, through evidence and in speaking with his supervisor, has personal knowledge that Defendant has altered the timesheets of other employees to remove overtime hours and thereby avoid compensating the other employees for such hours.

28. Other similarly situated employees are being denied their lawfully worked and earned wages.

29. Other similarly situated employees are having less than their full work hours recorded by Defendant.

30. Accordingly, Defendant's pattern, practice and policy of failing to pay the employees' overtime pay as required by the FLSA results from Defendant's general application

of polices and practice and does not depend on the personal circumstances of the members of the Plaintiff Class.

31. Plaintiff's experience in not being paid overtime is thus typical of the experience of the Plaintiff Class.

32. The specific job titles or job requirements of the Plaintiff Class do not prevent collective treatment.

33. All employees in the Plaintiff Class, regardless of their job requirements or rates of pay, who are denied overtime compensation for hours worked in excess of forty (40) per work week are similarly situated under the FLSA.

34. Although the amounts of damages due each member of the Plaintiff Class may be individual, the facts related to liability are common.

35. Plaintiff and the Plaintiff Class members seek an amount of back pay equal to the overtime compensation which has been unlawfully withheld for the period beginning three years prior to the filing of this suit and continuing through trial.

36. Defendant's failure to pay Plaintiff and all those similarly situated their earned overtime compensation is in violation of the FLSA. Plaintiff and all those similarly situated are therefore entitled to overtime in an amount equal to one and one-half times their regular rates of pay for each hour worked over forty (40) in each work week during the relevant period.

37. In addition, Plaintiff and all those similarly situated are also entitled to an amount equal to all their unpaid wages as liquidated damages.

38. Defendant has been sued in the past for overtime violations by managers and hourly club employees for failing to pay for all hours worked.

39. Previous suits by managers have placed Defendant on notice of the limited scope of exemptions to the FLSA. Previous suits by hourly employees put Defendant on notice that such employees must be paid for all hours actually worked.

40. Prior lawsuits have made Defendant aware that its payroll practices were in violation of the FLSA. Defendant, however, has failed to bring its timekeeping and compensation practices and policies into compliance with the FLSA.

41. The fact that Defendant routinely edits and alters the records of its employees' hours of work to eliminate or reduce the overtime actually worked and recorded, shows that Defendant is aware of its own continuing FLSA violations and seeks to conceal them.

42. Based on the prior lawsuits and Defendant's continuing willful efforts to conceal overtime hours worked by its employees, Defendant knew, or should have known that its Fitness Managers, such as Plaintiff, were entitled to be paid time and one-half their regularly hourly rate for their overtime hours actually worked.

43. Despite knowledge of the prior lawsuits and the employees off the book hours worked, Defendant has failed, and continues to fail, to pay proper overtime wages to its Fitness Managers in violation of the FLSA.

44. Plaintiff and the members of the Plaintiff Class are entitled to recover their attorney's fees and costs of this action as provided by the FLSA, 29 U.S.C. §216(b). In this regard, Plaintiff has hired the undersigned counsel to represent them in this action and have agreed to pay said counsel a reasonable fee for their services.

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, requests entry of judgment against Defendant for the following relief:

A. A declaration that Defendant has violated the Fair Labor Standards Act, specifically 29 U.S.C. §207, by failing to pay Plaintiff and all other similarly situated employees overtime pay at one and one-half times their regularly hourly rate for all hours worked in excess of forty (40) in any seven-day work week;

B. Damages for the full amount of unpaid overtime compensation due;

C. An equal amount of liquidated damages;

D. Reasonable attorney's fees, costs, and expenses of this action; and

E. Such other and further relief as may be allowed by law.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all issues so triable.

DATED: July 27, 2011.

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