

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

Pedro Guarcas, Edgar Orellana, and
Roberto Quinilla,

Plaintiffs,

v.

Gourmet Heaven, LLC,
RI Gourmet Heaven, Inc., and Chung Cho,

Defendants.

CIVIL ACTION NO: 3:15-cv-

JURY TRIAL REQUESTED

February ____, 2015

COMPLAINT

I. INTRODUCTION

1. This is an action brought by the plaintiffs, Pedro Guarcas, Edgar Orellana, and Roberto Quinilla, against the defendants, Gourmet Heaven, LLC, RI Gourmet Heaven, Inc., and Chung Cho, arising from the defendants' failure to lawfully pay the plaintiffs wages for their work. The plaintiffs allege violations of the minimum wage and overtime provisions of the federal Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA"), and the Rhode Island Minimum Wage Act, R.I. Gen. L. §28-12-1, *et seq.* ("RIMWA"). The plaintiffs seek to equitably toll the statute of limitations. The plaintiffs seek their unpaid minimum and overtime wages, liquidated damages pursuant to the FLSA, liquidated damages pursuant to the RIMWA, and their reasonable attorney's fees and costs.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331. With respect to the state law claims, this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367 in that the state law claims are so related to the federal claims that they form part of the same case

or controversy under Article III of the United States Constitution.

3. Venue is appropriate in the District of Rhode Island pursuant to 28 U.S.C. §1391(b), because a substantial part of the events giving rise to this claim occurred within this judicial district.

III. THE PARTIES

4. The plaintiffs, Pedro Guarcas, Edgar Orellana, and Roberto Quinilla, are residents of Rhode Island.

5. At all times relevant to this Complaint, the plaintiffs were employees of the defendants as that term is defined by the FLSA, 29 U.S.C. §203(e)(1), and by the RIMWA, §§28-12-2(5) and 28-14-1(2).

6. At all times relevant to this Complaint, the plaintiffs were each an employee engaged in commerce or the production of goods for commerce, and/or they were employees in an enterprise engaged in commerce or the production of goods for commerce within the meaning of 29 U.S.C. §207(a)(1).

7. Defendant Gourmet Heaven, LLC operates Gourmet Heaven, a gourmet grocery and restaurant, located at 173 Weybosset Street, Providence, Rhode Island.

8. At all times relevant to the Complaint, defendant RI Gourmet Heaven, Inc. operated Gourmet Heaven, a gourmet grocery and restaurant, located at 205 Meeting Street, Providence, Rhode Island.

9. Defendant Chung Cho is the sole member of defendant Gourmet Heaven, LLC, the president and sole shareholder of defendant RI Gourmet Heaven, Inc., and a resident of Connecticut.

10. At all times relevant to the Complaint, defendant Chung Cho made all relevant decisions regarding the plaintiffs' wages and working conditions at both Gourmet Heaven

locations.

11. At all times relevant to the Complaint, the defendants were employers as that term is defined by the FLSA, 29 U.S.C. §203(d), and by the RIMWA, §§28-12-2(6) and 28-14-1(3).

IV. STATEMENT OF FACTS

Pedro Guarcas

12. Pedro Guarcas ("Guarcas") was employed by the defendants to prepare food and stock shelves from on or around March 3, 2013 until on or around June 7, 2014.

13. Guarcas worked from 7:00am until approximately 7:00pm, Monday through Saturday, for a total of around 72 hours each week.

14. From on or around March 3, 2013 until on or around September 28, 2013, the defendants paid Guarcas \$400.00 per week in cash for his work.

15. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Guarcas by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

16. From on or around January 6, 2014 until on or around June 7, 2014, the defendants paid Guarcas by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

Edgar Orellana

17. Edgar Orellana was employed by the defendants to prepare food and stock shelves from on or around October 1, 2012 until on or around September 18, 2013 and again from around May 2014 until on or around December 3, 2014.

18. Orellana worked from 7:00am until approximately 7:00pm, Monday through Saturday, for a total of around 72 hours each week.

19. From on or around October 1, 2012 until on or around September 28, 2013, the defendants paid Orellana \$360.00 per week in cash for his work.

20. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Orellana by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

21. From on or around May 2014 until on or around December 3, 2014, the defendants paid Orellana in cash at the rate of \$8.00 per hour for forty hours and paid him in cash at the rate of \$12.00 for hours worked over forty in each week.

Roberto Quinilla

22. Roberto Quinilla ("Quinilla") was employed by the defendants to prepare food and stock shelves from on or around July 7, 2011 until on or around June 14, 2014.

23. From on or around July 7, 2011 until on or around December 21, 2011, Quinilla worked from 6:00am until approximately 6:00pm, Monday through Saturday, for a total of around 72 hours each week, and was paid \$330.00 in cash for that work.

24. From on or around January 5, 2012 until on or around June 14, 2014, Quinilla worked a shorter Saturday shift, from 6:00am to approximately 5:00pm, with the rest of his schedule unchanged, for a total of around 71 hours per week.

25. From on or around January 5, 2012 until on or around September 28, 2013, the defendants paid Quinilla \$360.00 per week in cash for his work.

26. From on or around September 30, 2013 until on or around December 21, 2013, the defendants paid Quinilla by payroll check at the rate of \$7.75 per hour for forty hours and paid him in cash at the rate of \$11.63 for hours worked over forty in each week.

27. From on or around January 6, 2014 until on or around March 22, 2014, the defendants paid Quinilla by payroll check at the rate of \$8.00 per hour for forty hours and paid

him in cash at the rate of \$12.00 for hours worked over forty in each week.

28. From on or around March 24, 2014 until on or around June 14, 2014, the defendants paid Quinilla by payroll check at the rate of \$8.00 per hour for forty hours and paid him in cash at the purported overtime rate of \$12.00 for hours worked over forty in each week, but actually gave him around \$100 less in each week.

All plaintiffs

29. During the plaintiffs' employment, the defendants did not post and keep posted a notice explaining the Fair Labor Standards Act, as prescribed by the U.S. Department of Labor, Wage and Hour Division, in a conspicuous place in their establishment such as would permit the plaintiffs or other employees to observe readily a copy, as required by 29 C.F.R. §516.4.

30. During the plaintiffs' employment, the defendants did not post and keep posted the minimum wage and overtime poster issued by the Rhode Island Department of Labor and Training at the places of employment where it could be read easily by its employees, as required by R.I. Gen. L. §28-12-11.

31. During the plaintiffs' employment, the defendants did not furnish to the plaintiffs a statement of earnings on every regular payday, including a record of hours worked and itemized deductions from gross earnings, as required by R.I. Gen. L. §28-14-2.1.

32. The plaintiffs do not speak or read English.

33. During the plaintiffs' employment by the defendants, they did not discover the nature or extent of the defendants' violations of their right to be paid according to the law because, *inter alia*, the defendants failed to conspicuously post and provide to the plaintiffs information mandated by federal and state law; the defendants failed to furnish to each plaintiff earnings statements mandated by state law; the plaintiffs did not speak or read

English; and the plaintiffs typically worked around 72 hours per week.

34. The defendants did not maintain a complete and accurate record of the hours worked, wages earned, and wages paid to the plaintiffs.

35. At all times relevant to the Complaint, the federal minimum wage was \$7.25 per hour.

36. From January 1, 2007 until December 31, 2012, the minimum hourly wage in Rhode Island was \$7.40.

37. From January 1, 2013 until December 31, 2013, the minimum hourly wage in Rhode Island was \$7.75.

38. From January 1, 2014 until December 31, 2014, the minimum hourly wage in Rhode Island was \$8.00.

V. COUNT ONE: FLSA AND RIMWA MINIMUM WAGE VIOLATIONS

1. The plaintiffs restate, re-allege and incorporate by reference paragraphs 1 through 38, above.

39. As described above, the defendants failed to compensate the plaintiffs by paying them at least the applicable Rhode Island minimum wage for each hour worked.

40. As described above, the defendants failed to compensate the plaintiffs by paying them at least the applicable federal minimum wage for each hour worked.

41. The defendants' failure to pay at least the applicable minimum wage as required by federal law was willful, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the FLSA and did not do so.

42. The defendants' failure to pay at least the applicable minimum wage as required by Rhode Island law was willful and/or in bad faith, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with

the RIMWA and did not do so.

43. As a result of the defendants' unlawful conduct as described above, the plaintiffs suffered a loss of wages.

VI. COUNT TWO: FLSA AND RIMWA OVERTIME VIOLATIONS

1. The plaintiffs restate, re-allege and incorporate by reference paragraphs 1 through 43, above.

44. As described above, the defendants failed to compensate the plaintiffs by paying them at least one and a half times their regular hourly wage for hours over forty worked in each week.

45. The defendants' failure to pay overtime wages as required by federal law was willful, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the FLSA and did not do so.

46. The defendants' failure to pay overtime wages as required by Rhode Island law was willful and/or in bad faith, inasmuch as the defendants were aware or reasonably should have been aware of their obligation to pay the plaintiffs consistent with the RIMWA and did not do so.

47. As a result of the defendants' unlawful conduct as described above, the plaintiffs suffered a loss of wages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully requests that this Court:

1. Equitably toll the statute of limitations;
2. Order the defendants to pay to the plaintiffs all minimum and overtime wages owed, consistent with the FLSA and RIMWA;
3. Award the plaintiffs liquidated damages for all federal minimum and

- overtime wages owed pursuant to 29 U.S.C. §216(b);
4. Award the plaintiffs liquidated damages for all Rhode Island minimum and overtime wages owed pursuant to R.I. Gen. L. §28-14-19.2(a);
 5. Award the plaintiffs their reasonable attorney's fees and costs; and
 6. Award the plaintiffs such other legal and equitable relief as the Court deems appropriate.

REQUEST FOR TRIAL BY JURY

The plaintiffs respectfully request a trial by jury as to all claims to which they are entitled.

RESPECTFULLY SUBMITTED
THE PLAINTIFFS, by

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