

CLOSED,EGT,MEDIATION,REF_PTRL

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:14-cv-23060-MGC**

Huembes v. Harrison Hotel, Inc. et al
Assigned to: Judge Marcia G. Cooke
Referred to: Magistrate Judge Edwin G. Torres
Cause: 29:0201 Fair Labor Standards Act

Date Filed: 08/19/2014
Date Terminated: 04/24/2015
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff

Guillermo O Huembes

represented by **Daniel T. Feld**
Daniel T Feld P.A.
20801 Biscayne Boulevard
Suite 403
Aventura, FL 33180

Email: [REDACTED]
TERMINATED: 03/11/2015
ATTORNEY TO BE NOTICED

Steven C. Fraser
J.H. Zidell, P.A.
300 71st Street, Suite 605
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Jamie H. Zidell
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Suite 605
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V.

Defendant

Harrison Hotel, Inc.

represented by **Joseph John Titone**
621 S.E. 5th Street
Ft. Lauderdale, FL 33060

[REDACTED]
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**Michael Kadosh**

represented by **Joseph John Titone**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/19/2014	<u>1</u>	COMPLAINT against All Defendants. Filing fees \$ 400.00 receipt number 113C-7005428, filed by Guillermo O Huembes. (Attachments: # <u>1</u> Summon(s), # <u>2</u> Civil Cover Sheet)(Zidell, Jamie) (Entered: 08/19/2014)
08/19/2014	<u>2</u>	Judge Assignment to Judge Marcia G. Cooke (ar2) (Entered: 08/20/2014)
08/20/2014	<u>3</u>	Summons Issued as to Harrison Hotel, Inc., Michael Kadosh. (ar2) (Entered: 08/20/2014)
08/21/2014	<u>4</u>	NOTICE of Attorney Appearance by Daniel T. Feld on behalf of Guillermo O Huembes. Attorney Daniel T. Feld added to party Guillermo O Huembes (pty:pla). (Feld, Daniel) (Entered: 08/21/2014)
09/09/2014	<u>5</u>	First AMENDED COMPLAINT against All Defendants, filed by Guillermo O Huembes.(Zidell, Jamie) (Entered: 09/09/2014)
09/10/2014	<u>6</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline by Guillermo O Huembes. Harrison Hotel, Inc. served on 9/4/2014, answer due 9/25/2014. (Zidell, Jamie) (Entered: 09/10/2014)
09/12/2014	<u>7</u>	ORDER REFERRING CASE to Magistrate Judge Edwin G. Torres for Pretrial Non-Dispositive Matters Signed by Judge Marcia G. Cooke on 9/12/2014. (tm) (Entered: 09/12/2014)
09/12/2014	<u>8</u>	Order of Court-Mandated Requirements in FLSA case Signed by Judge Marcia G. Cooke on 9/12/2014. (tm) (Entered: 09/12/2014)
09/15/2014	<u>9</u>	NOTICE of Attorney Appearance by Joseph John Titone on behalf of Harrison Hotel, Inc., Michael Kadosh. Attorney Joseph John Titone added to party Harrison Hotel, Inc.(pty:dft), Attorney Joseph John Titone added to party Michael Kadosh(pty:dft). (Titone, Joseph) (Entered: 09/15/2014)
09/15/2014	<u>10</u>	<i>Defendants'</i> ANSWER and Affirmative Defenses to Amended Complaint by Harrison Hotel, Inc., Michael Kadosh. (Titone, Joseph) (Entered: 09/15/2014)
09/19/2014	<u>11</u>	Statement of: Claim by Guillermo O Huembes re <u>8</u> Order of Requirements (Feld, Daniel) (Entered: 09/19/2014)

10/03/2014	12	Response to Plaintiff's Statement of Claim by Harrison Hotel, Inc., Michael Kadosh re 11 Statement (Attachments: # 1 Exhibit payment record)(Titone, Joseph) Modified text on 10/6/2014 (jua). (Entered: 10/03/2014)
10/03/2014	13	NOTICE of Compliance of <i>Defendants</i> by Michael Kadosh, Harrison Hotel, Inc. re 8 Order of Requirements (Attachments: # 1 Exhibit mailing receipt) (Titone, Joseph) (Entered: 10/03/2014)
11/25/2014	14	SCHEDULING REPORT - Rule 16.1 by Guillermo O Huembes (Attachments: # 1 Text of Proposed Order)(Cochran, Christopher) (Entered: 11/25/2014)
11/26/2014	15	Witness List <i>Defendants, for trial</i> by Harrison Hotel, Inc., Michael Kadosh.. (Titone, Joseph) (Entered: 11/26/2014)
12/04/2014	16	NOTICE of Mediator Selection: Neil Flaxman selected. (Attachments: # 1 Text of Proposed Order)(Feld, Daniel) (Entered: 12/04/2014)
12/04/2014	17	ORDER SETTING CIVIL TRIAL DATE AND PRETRIAL DEADLINES AND ORDER REFERRING TO MAGISTRATE: Jury Trial set for 9/21/2015 09:30 AM in Miami Division before Judge Marcia G. Cooke. Calendar Call set for 9/16/2015 03:00 PM in Miami Division before Judge Marcia G. Cooke. Expert Discovery due by 7/6/2015. Fact Discovery due by 5/4/2015. Joinder of Parties due by 1/5/2015. Proposed Jury Instructions and verdict form Deadline 8/17/2015. Mediation Deadline 6/3/2015. Dispositive Motions due by 5/4/2015. Daubert Motions due by 7/17/2015. Pretrial Stipulation due by 8/3/2015. Signed by Judge Marcia G. Cooke on 12/3/2014. (tm) (Entered: 12/04/2014)
12/04/2014	18	ORDER REFERRING CASE to Mediation. Mediation Deadline 6/3/2015. Signed by Judge Marcia G. Cooke on 12/3/2014. (tm) (Entered: 12/04/2014)
12/23/2014	19	Witness List <i>Defendants' First Amended</i> by Harrison Hotel, Inc., Michael Kadosh.. (Titone, Joseph) (Entered: 12/23/2014)
12/30/2014	20	Witness List by Guillermo O Huembes.. (Feld, Daniel) (Entered: 12/30/2014)
01/15/2015	21	NOTICE of Attorney Appearance by Steven Chapman Fraser on behalf of Guillermo O Huembes. Attorney Steven Chapman Fraser added to party Guillermo O Huembes(pty:pla). (Fraser, Steven) (Entered: 01/15/2015)
01/20/2015	22	NOTICE of Mediator Selection: Neil Flaxman selected. (Attachments: # 1 Text of Proposed Order)(Feld, Daniel) (Entered: 01/20/2015)
01/21/2015	23	Notice of Mediation Hearing before Mediator, Neil Flaxman filed by Neil Flaxman. Mediation Hearing set for 2/26/2015 01:30 PM (Flaxman, Neil) (Entered: 01/21/2015)
02/26/2015	24	CONSENT to Jurisdiction by US Magistrate Judge by Guillermo O Huembes (Feld, Daniel) (Entered: 02/26/2015)
03/03/2015	25	FINAL MEDIATION REPORT by Neil Flaxman. Disposition: Settled in full. (Flaxman, Neil) (Entered: 03/03/2015)
03/03/2015	26	Joint MOTION for Approval of the Parties' Settlement Agreement , Joint MOTION to Dismiss 1 Complaint (Responses due by 3/20/2015) by Guillermo

		O Huembes. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Exhibit "A")(Feld, Daniel) (Entered: 03/03/2015)
03/09/2015	<u>27</u>	ORDER REQUIRING DOCUMENTATION SUPPORTING ALLOCATION OF ATTORNEY'S FEES AND COSTS, deferring ruling on <u>26</u> Motion ; deferring ruling on <u>26</u> Motion to Dismiss. Signed by Judge Marcia G. Cooke on 3/9/2015. (tm) (Entered: 03/09/2015)
03/09/2015	28	Calendar Entry Documentation in support of attorneys fees Deadline 3/19/2015. (tm) (Entered: 03/09/2015)
03/11/2015	<u>29</u>	Plaintiff's MOTION to Withdraw as Attorney by Daniel Feld. by Guillermo O Huembes. Responses due by 3/30/2015 (Attachments: # <u>1</u> Text of Proposed Order)(Feld, Daniel) (Entered: 03/11/2015)
03/11/2015	30	ORDER granting <u>29</u> Motion to Withdraw as Attorney. Attorney Daniel T. Feld terminated as counsel of record for Plaintiff, who continues to be represented by lead counsel. Docket Order Signed by Magistrate Judge Edwin G. Torres on 3/11/2015. (EGT) (Entered: 03/11/2015)
04/24/2015	<u>31</u>	ORDER DISMISSING CASE Closing Case. Motions terminated: <u>26</u> Joint MOTION for Approval of the Parties' Settlement Agreement Joint MOTION to Dismiss <u>1</u> Complaint filed by Guillermo O Huembes. Signed by Judge Marcia G. Cooke on 4/24/2015. (tm) NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. (Entered: 04/24/2015)

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07/15/2015 11:07:03			
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Description:	Docket Report	Search Criteria:	1:14-cv-23060-MGC
Billable Pages:	4	Cost:	0.40

5. All acts or omissions giving rise to this dispute took place in Dade County.

COUNT I. FEDERAL OVERTIME WAGE VIOLATION

6. This action arises under the laws of the United States. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendants have employed several other similarly situated employees like Plaintiff who have not been paid overtime and minimum wages for work performed in excess of 40 hours weekly from the filing of this complaint back three years.
7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).
8. 29 U.S.C. § 207 (a) (1) states, " if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty at the rate of at least one and one half times the employee's regular rate...."
9. Plaintiff worked for Defendants as a handy man and maintenance from on or about December 15, 1992 through on or about July 18, 2014.
10. Defendant's business activities involve those to which the Fair Labor Standards Act applies. Both the Defendant's business and the Plaintiff's work for the Defendants affected interstate commerce for the relevant time period. Plaintiff's work for the Defendants affected interstate commerce for the relevant time period because the materials and goods that Plaintiff used on a constant and/or continual basis and/or that were supplied to him by the Defendants to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiff's work for the Defendants was actually in and/or so closely related to

the movement of commerce while he worked for the Defendants that the Fair Labor Standards Act applies to Plaintiff's work for the Defendants. Specifically, the Defendants' hotel business catered to out-of-state and international guests.

11. Additionally, Defendants regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendant's business an enterprise covered under the Fair Labor Standards Act.
12. Upon information and belief, the Defendant Corporation had gross sales or business done in excess of \$500,000 annually for the years 2008 through 2013.
13. Upon information and belief, the Defendant Corporation's gross sales or business done is expected to exceed \$500,000 for the year 2014.
14. Upon information and belief, Defendant HARRISON HOTEL, INC. is part of a joint enterprise as defined by 29 U.S.C. 203(r) as the Defendants' own more than one business and the related activities between the companies, performed through unified operation and/or common control, are being done for a common business purpose.
15. Between the period of on or about December 15, 1992 through on or about July 18, 2014, Plaintiff worked an average of 70 hours a week for Defendants and was paid an average of \$5.35 per hour but was never paid the extra half time rate for any hours worked over 40 hours in a week as required by the Fair Labor Standards Act. Plaintiff therefore claims the half time overtime rate based on the applicable minimum wage rate for each hour worked above 40 in a week.
16. Defendants willfully and intentionally refused to pay Plaintiff's overtime wages as required by the Fair Labor Standards Act as Defendants knew of the overtime requirements of the Fair

Labor Standards Act and recklessly failed to investigate whether Defendants' payroll practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendants for the time period specified above.

Wherefore, the Plaintiff requests double damages and reasonable attorney fees from Defendants, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for all overtime wages still owing from Plaintiff's entire employment period with Defendants or as much as allowed by the Fair Labor Standards Act along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. *The Plaintiff requests a trial by jury.*

COUNT II. FEDERAL MINIMUM WAGE VIOLATION

COMES NOW PLAINTIFF, through Counsel, and re-adopts the factual and jurisdictional statements in paragraphs 1-16 above and further states:

17. 29 U.S.C. § 206 (a) (1) states "...an employer must pay a minimum wage of \$5.15/hr to an employee who is engaged in commerce..." [29 U.S.C. § 206 (a) (1)]. On July 24, 2007 Federal minimum wage was raised to \$5.85/hr. On July 24, 2008, Federal minimum wage was raised to \$6.55/hr. On July 24, 2009, Federal minimum wage was raised to \$7.25/hr.
18. Between on or about December 15, 1992 through on or about July 18, 2014, Plaintiff worked an average of 70 hours a week for the Defendants. Plaintiff was paid \$5.35/hr for said work in violation of the Fair Labor Standards Act as said payment of \$5.35/hr did not meet the applicable Federal Minimum Wage required for said period of time. Therefore, Plaintiff

claims difference between his average hourly rate of \$5.35/hr and the applicable minimum wage rate of \$7.25/hr for all hours worked.

19. The Defendants wage payment practices to Plaintiff for this time period did not meet the federal minimum wage law requirements as Plaintiff was not paid the required federal minimum wage for all hours worked and is therefore claiming federal minimum wage violations.
20. Defendants willfully and intentionally refused to pay Plaintiff's minimum wages as required by the Fair Labor Standards Act as Defendants knew of the Federal Minimum Wage requirements of the Fair Labor Standards Act and recklessly failed to investigate whether Defendants' payroll practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendants for the time period specified above.

Wherefore, Plaintiff requests double damages and reasonable attorney fees from the Defendants, jointly and severally, pursuant to the Fair Labor Standards Act and as cited above, to be proven at the time of trial for all minimum wages still owing from Plaintiff's entire employment period with Defendants or, as much as allowed by the Fair Labor Standards Act -- whichever is greater along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. *The Plaintiff requests a trial by jury.*

COUNT III. FLORIDA MINIMUM WAGE VIOLATION

COMES NOW PLAINTIFF, through Counsel, and re-adopts the factual and jurisdictional statements in paragraphs 1-20 above and further states:

21. This Court has jurisdiction for Plaintiff's Florida state minimum wage claim under the Court's Supplemental Jurisdiction. 28 USC 1367.
22. Florida Statute § 448.110 (3) states "Effective May 2, 2005, employers shall pay employees a **minimum wage** at an hourly rate of \$6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal **minimum wage** under the federal Fair Labor Standards Act and its implementing regulations shall be eligible to receive the state **minimum wage** pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein." [Fla. Stat. § 448.110 (3)].
23. Florida Statute § 448.110 (4)(a) states "Beginning September 30, 2005, and annually on September 30 thereafter, the Agency for Workforce Innovation shall calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1."
24. All conditions precedent pursuant to §448.110 have been met by Plaintiff to seek his minimum wage claim against the Defendants. On August 20, 2014, Plaintiff initially sent via certified U.S Mail the required Florida Minimum Wage Notice to the Defendants pursuant to Florida Statute § 448.110(6)(a). On August 22, 2014, the Notice was delivered to Defendants.
25. Florida Statute §448.110(6)(b) provides that upon receipt of said Florida Minimum Wage Notice "The employer shall have 15 calendar days after receipt of the notice to pay the total

amount of unpaid wages or otherwise resolve the claim to the satisfaction of the person aggrieved.” The 15 calendar days expired on September 6, 2014. However, as of September 9, 2014, the Plaintiff and the Defendants have been unable to resolve said Florida Minimum Wage violation.

26. As of May 2, 2005, Florida’s minimum wage was raised to \$6.15/hr. On January 1, 2006 the Florida Minimum Wage was raised to \$6.40/hr. On January 1, 2007 the Florida Minimum Wage was raised to \$6.67/hr. On January 1, 2008 the Florida Minimum Wage was raised to \$6.79/hr. On January 1, 2009 the Florida Minimum Wage was raised to \$7.21/hr. On June 24, 2009, the Florida minimum wage defaulted to the Federal minimum wage rate of \$7.25/hr. On June 1, 2011, the Florida minimum wage was increased to \$7.31/hr. On January 1, 2012, the Florida minimum wage was increased to \$7.67/hr. On January 1, 2013, the Florida minimum wage was increased to \$7.79/hr. On January 1, 2014, the Florida minimum wage was increased to \$7.93/hr. Florida Minimum wage claims are brought pursuant to the Florida Constitution and the Fair Labor Standards Act.
27. From on or about December 15, 1992 through on or about July 18, 2014, Plaintiff worked an average of 70 hours a week and was paid an average of \$5.35 per hour. Plaintiff was not paid the proper Florida minimum wage for the relevant time periods (set forth above) as required by the Florida Constitution.
28. The Defendants’ wage payment practices to Plaintiff between on or about December 15, 1992 through on or about July 18, 2014 did not meet the Florida minimum wage law requirements as Plaintiff was not paid the required Florida minimum wage for all hours worked and is therefore claiming the difference between the amount paid to Plaintiff and the

Florida Bar Number: 0010121