



IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

JOSH NOLEN

Plaintiff

vs

FIREBIRDS OF OVERLAND PARK LLC

Defendant

Case No: 17CV01658

Division: 4

K.S.A. Chapter 60

REQUEST AND SERVICE INSTRUCTION FORM

To: Clerk of the District Court:

Please issue a SUMMONS and PETITION in this action for FIREBIRDS OF OVERLAND PARK LLC whose address for service is:

700 SW JACKSON ST., STE. 100
TOPEKA, KS 66603

Certified mail service by the undersigned attorney, who understands that it is their responsibility to obtain service and to make the return to the clerk. The postal receipt for service must be filed with the Clerk's office to prove service.

By: /s/ PHILLIP M MURPHY II
PHILLIP M MURPHY II, #23770
4717 GRAND AVENUE, SUITE 250
KANSAS CITY, MO 64112
913-661-2900

*Clerk of the District Court, Johnson County Kansas
03/22/17 12:29pm EC*

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DIVISION**

JOSH NOLEN,)	
)	
On Behalf of Himself and)	
All Others Similarly Situated,)	
)	
)	
Plaintiffs,)	
v.)	Case No.
)	
FIREBIRDS OF OVERLAND PARK, L.L.C.,)	Div.
)	
Serve: Capitol Corporate Services, Inc.,)	
700 S.W. Jackson St., Ste. 100,)	
Topeka, Kansas 66603,)	
)	
Defendant.)	

PETITION FOR DAMAGES

COMES NOW the Plaintiff, Josh Nolen, and all other individuals similarly situated, by and through their attorneys of record, the undersigned, and hereby set forth, collectively, their causes of action against Defendant, under § 216(b) of the Fair Labor Standards Act (“FLSA”) for violations of the FLSA. In support thereof, the Plaintiff asserts and states as follows:

PRELIMINARY STATEMENT

1. Plaintiff and others similarly situated bring this action against Firebirds of Overland Park, L.L.C. (hereinafter, “Firebirds”), for unpaid wages, and related penalties and damages.

2. Defendants’ practices and policies have resulted in Defendants willfully failing to properly pay straight time and overtime due and owing to Plaintiffs and all other similarly situated employees in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et*

seq.

3. Further, Defendants have received the benefits of the work of the Plaintiffs and others similarly situated, and failed to compensate them for the reasonable value of these services.

4. Defendant is a Kansas Limited Liability Company, with a registered agent as stated in the caption.

5. Defendant has claimed the tip credit on the Plaintiffs and other similarly situated employees, despite not actually paying the putative Plaintiffs the actual tips or giving them adequate required notice. Thus, the Defendant is in violation of the FLSA and its tip credit requirements, and therefore, has failed to pay their putative Plaintiffs their due minimum wage and overtime as required by the Act.

6. Defendant has failed to pay wages and overtime to their hourly employees by failing to pay them for all of their compensable time in violation of the FLSA. Plaintiffs and others similarly situated seek compensation for unpaid straight time and overtime premiums for all hours worked, required, suffered, or permitted by the Defendant; compensation for such wages wrongfully withheld; liquidated and/or other damages as permitted by applicable law; and attorneys' fees, costs, and expenses incurred in this action.

PARTIES

7. Named Plaintiff resides in Grandview, Missouri.

8. For all times relevant hereto, Named Plaintiff was employed as an hourly employee of Defendant in Johnson County, Kansas. Plaintiff and all others similarly situated, for the purposes of this action, also have performed work as hourly employees of the Defendant at that location.

JURISDICTION AND VENUE

9. This Court, being a State Court of competent jurisdiction, has jurisdiction over the parties and the subject matter of this action.

under 28 U.S.C. § 1331 for the claims brought under the FLSA, 29 U.S.C. § 216 (b).

10. Venue is proper here as the conduct pled occurred in Johnson County, Knasas.

COUNT I – FLSA CLAIMS

11. Plaintiff hereby incorporates by reference all allegations set forth above as if fully asserted herein.

12. While employed by Defendant, Plaintiff and all others similarly situated performed work as a hourly employees.

13. During the Plaintiff's employment with the Defendant, the Defendant employed numerous other individuals, at the same location. These individuals had similar responsibilities to the Plaintiff, and their compensation structure was similar to the Plaintiff's; further, they were also subject to Defendant's illegal tip credit theft policies.

14. Plaintiff brings his FLSA claim as an "opt-in" collective action pursuant to Section 216(b) of the FLSA, on behalf of themselves and all persons who were, are, or will be employed by the Defendant as hourly employees within three years from the commencement of this action who have not been compensated for all straight time and overtime premiums for all hours for which they suffered or were permitted to work.

15. Plaintiff and the putative plaintiffs are similarly situated in that they have been subjected to Defendant's common practices or policies of refusing to pay straight time and overtime for all hours worked in violation of the FLSA.

16. The names and addresses of the putative plaintiffs are available from the Defendant. To the extent required by law, Plaintiff will seek notice to be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in collective FLSA actions.

17. The FLSA requires each covered employer to compensate all employees for all

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hours suffered or permitted to work and to pay overtime premiums at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a workweek.

18. At all relevant times, the Defendant's policies are such they are claiming tip credits that are not actually paid to the employees. Further, the Defendant has not provided the proper tip credit notice to their employees. The result of this is that the Defendant is failing to properly pay its hourly employees the correct minimum wage.

19. More generally, the Defendant has failed to compensate Plaintiff and all other similarly situated employees for all hours worked, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. § 201, *et seq.*

20. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

21. Plaintiff, on behalf of himself and all similarly situated employees of Defendant, seeks damages in the amount of all respective unpaid straight time with overtime compensation at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

22. Plaintiff, on behalf of himself and all similarly situated employees of Defendants, seeks recovery of all attorney fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

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

- a. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b)

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to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. § 216(b);

- b. Designation of Plaintiff Josh Nolen as a Representative Plaintiff of the putative members of the FLSA collective action and designation of undersigned counsel as class counsel;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. § 201, *et seq.*;
- d. An award of damages for straight time and overtime compensation due for the Plaintiff and the putative members of the collective actions, including liquidated damages, to be paid by Defendant;
- e. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- f. Pre-Judgment and Post-Judgment interest, as provided by law; and
- g. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Demand for Jury Trial

Plaintiffs hereby demand a jury trial on all claims and issues triable by jury.

Respectfully submitted,

LAW OFFICE OF PHILLIP M. MURPHY, II

/s/ Phillip M. Murphy II

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ATTORNEY FOR PLAINTIFF

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