

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON
CIVIL ACTION NO. 15-CI-_____

KENNY PEAVLER,)	
)	
Plaintiff)	Complaint
)	Jury Trial Demanded
vs.)	
)	
AASM, Inc., a Kentucky corporation)	
d/b/a, Giovanni's of Danville,)	
)	
Defendant,)	
)	
MAMDOUH K. ALI,)	
)	
Defendant)	
)	

Plaintiff Kenny Peavler for his Complaint against defendants AASM, Inc., d/b/a Giovanni's of Danville and Mamdouh K. Ali states as follows:

I

Nature of the Action

1. This is an action pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), as amended, and KRS Chapter 337 seeking recovery of unpaid overtime compensation, liquidated damages, attorney's fees, costs, litigation expenses and prejudgment interest.

II

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because plaintiffs' claims raise questions of federal law. The Court's supplemental jurisdiction is properly exercised pursuant to 28 U.S.C. § 1367, because plaintiffs'

federal and state law claims arise from and relate to a common nucleus of operative and material fact. Venue is proper in this court, because plaintiff's claims arose in and defendants maintain their principal place of business and/or are residents of Boyle County, Kentucky.

III

Parties

3. Plaintiff Kenny Peavler is a resident of Mercer County, Kentucky.

4. Defendant AASM, Inc. is a Kentucky corporation whose agent for service of process, according to the electronic records of the Kentucky Secretary of State, is Mamdouh K. Ali, 1093 Argyll Drive, Danville, Boyle County, KY 40422. AASM does business as Giovanni's of Danville.

5. Defendant Mamdouh K. Ali is, upon information and belief, a resident of Boyle County, Kentucky.

IV

Facts Giving Rise to Lawsuit

6. Peavler was employed as a pizza cook at Giovanni's of Danville, a pizzeria, from in and about June 2010 to on or about October 1, 2015.

7. At all times pertinent to this action, defendant Ali was responsible for the day to day operations of Giovanni's including the hiring and firing of employees, determining the terms of the employees' employment including pay, causing paychecks to be issued, determining whether or not employees would be paid overtime in compliance with state and federal law and otherwise engaged daily in the running and operation of the business.

8. Peavler in the course of his employment regularly and daily handled goods and/or materials that were moved in and/or produced for interstate commerce by another person and were subject to interstate commerce.

9. Giovanni's of Danville, at all times pertinent to this case, had or maintained an annual gross volume of sales made or business done of not less than \$500,000.

10. Giovanni's of Danville, at all times pertinent to this case, had or maintained an annual gross volume of sales made or business done of more than \$95,000.

11. Defendants were, at all times pertinent to this case, the employer of Peavler within the meaning of 29 U.S.C. § 203(d) and KRS 337.010(1)(d).

12. Peavler was, at all times pertinent to this case, an "employee" of defendants within the meaning of 29 U.S.C. § 203(e) and KRS 337.010(1)(e).

13. Peavler was not employed by defendants in a capacity making him exempt from the overtime pay requirements of the FLSA and/or KRS Chapter 337.

14. Throughout his employment by defendants Peavler was regularly and routinely required to and did work regularly in excess of forty (40) hours per workweek.

15. At all times pertinent to this case, defendants knew, required, approved and/or suffered Peavler to work in excess of forty (40) hours per workweek.

16. Defendants willfully and intentionally required, approved and/or suffered Peavler to work more than forty (40) hours per workweek, while willfully

and unlawfully failing and refusing to pay him overtime compensation as required by the FLSA and KRS Chapter 337.

V

Causes of Action

Count 1 – Failure to Pay Overtime in Violation of FLSA

17. Peavler incorporates and realleges herein the preceding paragraphs 1 – 16 as if fully set forth herein.

18. Under the FLSA, 29 U.S.C. § 207, *et seq.*, defendants were and are required to compensate Peavler for all hours worked in excess of forty (40) hours per workweek.

19. The FLSA requires that overtime compensation be paid at a rate not less than one and one-half (1.5) Peavler’s regular rate of pay.

20. For purposes of calculating overtime compensation, the FLSA provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

21. Defendants have required, suffered and/or permitted Peavler to work in excess of forty (40) hours per workweek but did not compensate any of them for such overtime work.

22. As a result of defendants’ policy and practice of failing to pay overtime compensation, Peavler has been damaged in that he has not been paid by defendants the overtime compensation that he has earned.

23. Defendants’ failure to pay Peavler the overtime compensation he earned was a willful and intentional violation of the FLSA.

Count 2 – Failure to Pay Overtime in Violation of KRS Chapter 337

24. Peavler incorporates and realleges herein the preceding paragraphs 1 – 23 as if fully set forth herein.

25. Under KRS Chapter 337, defendants were and are required to compensate Peavler at an overtime rate for all hours worked in excess of forty (40) hours per workweek.

26. KRS Chapter 337 requires that overtime compensation be paid at a rate not less than one and one-half (1.5) Peavler's regular rate of pay.

27. For purposes of calculating overtime compensation, KRS Chapter 337 provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

28. Defendants have required, suffered and/or permitted Peavler to work in excess of forty (40) hours per workweek but did not compensate him for such overtime work.

29. As a result of defendants' policy and practice of failing to pay overtime compensation, Peavler has been damaged in that he has not been paid by defendants the overtime compensation that he has earned.

30. Defendants' failure to pay Peavler the overtime compensation he earned was a willful and intentional violation of KRS Chapter 337.

VI

Demand for Judgment

Wherefore, plaintiff Kenny Peavler demands judgment against defendants, jointly and severally, as follows:

(1) entry of a judgment in his favor and against defendants requiring defendants to pay him the overtime compensation due and owing him along with an additional equal amount as liquidated damages as shown by the evidence at trial;

(2) entry of a judgment awarding him prejudgment interest on his unpaid overtime compensation along with the costs, litigation expenses and reasonable attorney's fees pursuant to the FLSA, KRS 337.385 and Fed.R.Civ. Pro. 54; and,

(3) the grant of all other relief to which each of them is shown to be entitled.

Demand for Jury Trial

Plaintiffs demand trial by jury on all issues herein so triable.

Respectfully submitted,

By: /s/ Robert L. Abell
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