

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____-CIV-_____/_____

DANA AIELLO, on behalf of himself
and others similarly situated,

Plaintiff,

v.

TREMBLAY PAINTING AND WATERPROOFING, INC.,
a Florida Corporation, and
ROBERT TREMBLAY, individually

Defendants.

COMPLAINT

1. Plaintiff, DANA AIELLO, (hereinafter referred to as “Plaintiff”), is an individual residing in Broward County, Florida.

2. Defendant, TREMBLAY PAINTING AND WATERPROOFING, INC., (“TPW”), a Florida Corporation, has its principal address at 4307 NW 70th Lane, Coral Springs, Florida 33065 and has provided primarily painting services to residential and commercial customers throughout the State of Florida, including in Miami-Dade, Broward, and Palm Beach County, Florida, within the jurisdiction of this Court, as well as for out of state customers including but not limited to in Massachusetts and North Carolina.

3. Defendant, ROBERT TREMBLAY (“TREMBLAY”) has at all times material to this Complaint owned, managed, and operated TPW and Defendant TREMBLAY has regularly exercised the authority to hire and fire Plaintiff and Defendants’ other employees, determined the manner in which Plaintiff and Defendants’ other employees are compensated, determined how Plaintiff’s and Defendants’ other employees’ hours worked are tracked or recorded, set the rates

of pay of Plaintiff and Defendants' other employees, and controlled the finances and operations of TPW. By virtue of such control and authority, Defendant TREMBLAY is an employer of Plaintiff and the other similarly situated employees within the meaning of the Fair Labor Standards Act, 29 U.S.C. §203(d).

4. Plaintiff brings this action on behalf of himself and other current and former Painters and/or Laborers of TPW and ROBERT TREMBLAY (collectively referred to as "Defendants") for unpaid wages and overtime compensation, liquidated damages, and the costs and reasonable attorneys' fees of this action under the provisions of the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. §216(b), and Florida law.¹ It is the intent of this collective action to apply to all similarly situated employees regardless of location.

5. At all times material to this Complaint Defendants have acted in the interest of an employer toward Plaintiff and the other similarly situated employees within the meaning of the Fair Labor Standards Act, 29 U.S.C. §203(d), including without limitation directly or indirectly controlling the terms of employment and compensation of Plaintiff and the other employees similarly situated to him.

6. Jurisdiction is conferred on this Court by 29 U.S.C. §216(b) and 28 U.S.C. §1337 & §1367.

7. A substantial part of the events giving rise to this action, occurred in Miami-Dade, Broward, and Palm Beach, County, within the jurisdiction of the United States District Court for the Southern District of Florida.

8. At all times material to this Complaint, including but not necessarily limited to during the years 2012, 2013, 2014, 2015 and 2016, TPW has had two (2) or more employees who

¹ Attached hereto is a signed Consent to Join of Plaintiff AIELLO.

have regularly sold, handled, or otherwise worked on goods and/or materials that had been moved in or produced for commerce. In this regard, Plaintiff alleges based upon information and belief and subject to discovery, that at all times material to this Complaint, TPW has employed two (2) or more employees who, *inter alia*, have regularly: (a) handled and/or worked on, including but not limited to residential and commercial buildings, made of goods and/or materials that were moved in or produced for commerce; (b) handled and worked with painting tools and related equipment such as paint brushes, rollers, spray paint guns, wall scrapers, putty knives, caulking gun, wire brush, pails and roller grid, disposable coveralls, specialty paint pads, ladders, scaffolds, scissor lifts, pressure washer, generators, rakes, shovels, all of which were goods and/or materials that were moved in or produced for commerce; (c) handled and worked with sandpaper, caulking, putty, spackling compound, primer, paint, masking tape, and plastic or canvas drop cloths, silicone, roofing membrane, tar, all of which were goods and/or material moved in or produced for commerce; and (d) transacted business with customers across State lines, including but not limited to between the States of Florida, Massachusetts, and North Carolina; and (e) traveled in company vehicle to Defendants' customers' locations, which vehicle was a good and/or material moved in or produced for commerce and which operated on gasoline that also constitute goods and/or materials moved in or produced for commerce.

9. Based upon information and belief, the annual gross sales volume of TPW has been in excess of \$500,000.00 per annum at all times material to this Complaint, including but not necessarily limited to during the years 2012, 2013, 2014, 2015 and 2016.

10. At all times material to this Complaint, including but not necessarily limited to during the years 2012, 2013, 2014, 2015 and 2016, TPW has constituted an enterprise engaged in interstate commerce or in the production of goods for commerce as defined by the FLSA, 29 U.S.C.

§203(s).

11. At all times material to this Complaint between approximately December 2014 and June 2016, Plaintiff was himself individually engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §207(a)(1), because, *inter alia*, Plaintiff regularly and directly participated in the actual movement of persons and things in interstate commerce including but not necessarily limited to Plaintiff traveling from Florida to one or more other States including Massachusetts for Defendants in order to complete work painting and related work assignments at Defendants' job sites such as at a large storage facility in Tewksbury, Massachusetts.

12. During the three (3) year statute of limitations period between approximately December 2014 and June 2016, Plaintiff's primary duties for Defendants at numerous job sites—such as hospitals, office buildings, and assisted living facilities—in Miami-Dade, Broward, and Palm Beach, County as Painter and Laborer were non-exempt in nature, consisting of traveling to and from Defendants' work sites and carrying out the following non-exempt manual labor: (a) cleaning and smoothing the surface of the area to be painted; (b) filling nail holes, cracks, and joints with caulk, putty, plaster, or other filler, using caulking gun and putty knife; (c) spreading drop cloths/plastic over floors or other surfaces with tape to protect surfaces during painting; (d) mixing primer, thinners, oils and paint; (e) applying tar, silicone, primer, paint with brushes, rollers or spray guns to the areas or surfaces to be painted; (f) digging ditches; (g) rolling out silicone on roofs; and (h) loading and unloading materials.

13. During numerous work weeks within the three (3) year statute of limitations period between approximately December 2014 and June 2016, Plaintiff worked in excess of Forty (40) hours per week for Defendants but was not paid time and one-half wages for *all* of his actual overtime hours worked for Defendants. Instead, Defendants paid Plaintiff based upon a regular

rate of \$18.00/hour with compensation at the rate of \$27.00/hour for only *some* of his actual overtime hours each week without paying time and one-half wages for *all* of Plaintiff's hours worked in excess of Forty (40) hours per week between approximately Forty-Eight (48) weeks.

14. During numerous work weeks between approximately December 2014 and June 2016, Plaintiff worked Five (5) days per week for Defendants with start times of between 6:00 a.m. and 6:30 a.m. and stop times of approximately 4:00 p.m., regularly working between approximately Fifty (50) and Fifty-Two and One-Half (52.5) hours per week.

15. Likewise, Defendants also failed to pay Plaintiff for regular hours he worked for Defendants during numerous work weeks between approximately December 2014 and June 2016, despite the fact that Plaintiff was entitled to be paid his regular hourly rate of \$18.00/hour for each regular hour Plaintiff worked for Defendants.

16. The additional persons who may become Plaintiffs in this action are the current and former non-exempt Painters and/or Laborers, however variously titled, who have worked for Defendants in one or more weeks between November 2013 and the present without being paid time and one-half wages for all of their actual hours worked in excess of Forty (40) hours per week during one or more work weeks within the three (3) year statute of limitations period.

17. In numerous work weeks between November 2013 and the present, Defendants have willfully failed to comply with the requirements of the FLSA by, *inter alia*: (a) failing to maintain contemporaneous records of the actual start times, stop times, and total hours worked each week by Plaintiff and Defendants' other non-exempt Painters and/or Laborers, however variously titled; and (b) failing to pay overtime compensation for *all* of the actual overtime hours worked by Plaintiff and those employees similarly situated to him as a result of work being performed which Defendants willfully refused to credit as compensable work time during—but

not necessarily to in—the following periods: (i) travel time to and/from Defendants’ work sites each day after picking up employees and materials; (ii) travel time each day between one or more work sites; (iii) waiting time for Defendant TREMBLAY to receive assignments or drop off materials; and (iv) hours worked on Defendants’ job sites for which Defendants did not credit Plaintiff’s time and the other similarly situated to him.

18. At all times material to this Complaint, Defendants had knowledge of the actual hours worked by Plaintiff and other similarly situated non-exempt employees in multiple work weeks between November 2013 and the present, all of which work was for the benefit of Defendants. Nonetheless, Defendants knowingly and willfully failed to compensate Plaintiff and the other similarly situated employees with time and one-half wages for all of their actual overtime hours worked, instead accepting the benefits of the work performed by Plaintiff and the others similarly situated to him without paying the overtime compensation required by the FLSA.

19. Based upon information and belief, Defendants have failed to maintain records of the all of the actual start times, stop times, number of hours worked each day, and total hours actually worked each week by Plaintiff and the other similarly employees for Defendants for each and every work week during the statute of limitations period between November 2013 and the present.

20. The complete records concerning the compensation actually paid to Plaintiff and the other similarly situated employees between November 2013 and the present are in the possession, custody, and/or control of Defendants.

COUNT I
OVERTIME VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

21. Plaintiff, DANA AIELLO, readopts and realleges the allegations contained in Paragraphs 1 through 20 above.

22. Plaintiff is entitled to be paid time and one-half of his applicable regular rate(s) of pay for each and every hour he worked for Defendants in excess of Forty (40) hours per work week during the three (3) year statute of limitations period between December 2014 and June 2016.

23. Based upon Plaintiff being owed an average of Twelve (12) unpaid overtime hours per week at the rate of \$27.00/hour from Defendants during a total of approximately Twelve (12) weeks out of the approximate Seventy-Eight (78) week period between approximately December 2014 and June 2016—from Two (2) hours shorted by Defendants for worked performed by Plaintiff on Defendants' job sites and approximately Ten (10) hours of travel time between the job sites and Defendant TREMBLAY's home and/or origin of work—Plaintiff's unpaid overtime wages total \$3,888.00 [12 Unpaid OT hours/week x \$27.00/hour x 12 weeks = \$3,888.00].

24. All similarly situated current and former non-exempt Painters and/or Laborer, however variously titled, who have worked in excess of Forty (40) hours per week for Defendants in one or more weeks between November 2013 and the present are also entitled to be paid time and one-half of their applicable regular rates of pay for each and every overtime hour they worked for Defendants but were not properly compensated for working on Defendants' behalf during any work weeks within the three (3) year statute of limitations period.

25. At all times material to this Complaint, Defendants have had actual notice, including Defendant TREMBLAY having personal knowledge, that Defendants' compensation practices did not provide Plaintiff and the other similarly situated non-exempt employees with time and one-half wages for all of their actual overtime hours worked between November 2013 and the present based upon, *inter alia*: (a) Defendants facilitating the creation, oversight, and administration of compensation practices, timekeeping practices, and employment policies governing Plaintiff and the other employees similarly situated to him which knowingly and

willfully did not provide time and one-half compensation for *all* of the hours worked in excess of Forty (40) hours per week; and (b) Defendants' failure to maintain accurate records of the start times, stop times, and all of the actual hours worked by Plaintiff and the other similarly situated employees for Defendants as required by the Fair Labor Standards Act for each work week within the three (3) year statute of limitations period between November 2013 and the present.

26. By reason of the intentional, willful and unlawful acts of Defendants, all Plaintiffs (the named Plaintiff and those similarly situated to him) have suffered damages plus incurring costs and reasonable attorneys' fees.

27. Defendants did not have a good faith basis for their failure to pay time and one-half wages for all of the actual overtime hours worked by Plaintiff and Defendants' other non-exempt Painters and/or Laborers, however variously titled, as a result of which Plaintiff and the other similarly situated employees are entitled to the recovery of liquidated damages from Defendants pursuant to 29 U.S.C. §216(b).

28. Plaintiff has retained the undersigned counsel to represent him in this action, and pursuant to 29 U.S.C. §216(b), Plaintiff is entitled to recover from Defendants all reasonable attorneys' fees and costs incurred as a result of Defendants' violations of the FLSA.

29. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff, DANA AIELLO, and any current or former non-exempt employees similarly situated to him who join this action as Opt-In Plaintiffs, demand judgment, jointly and severally, against Defendants, TREMBLAY PAINTING AND WATERPROOFING, INC. and ROBERT TREMBLAY, for the payment of all unpaid overtime compensation, liquidated damages, reasonable attorneys' fees and costs of suit, and for all proper relief including prejudgment interest.

COUNT II
RECOVERY OF UNPAID WAGES UNDER FLORIDA LAW

Plaintiff, DANA AIELLO, readopts and realleges the allegations contained in Paragraphs 1 through 20 above.

30. Between approximately December 2014 and June 2016, Plaintiff performed work for Defendants for which he was not compensated at all, despite Defendants accepting the benefits of Plaintiff's work.

31. Pursuant to Florida law, Plaintiff is owed earned but unpaid wages and has suffered damages as a result of Defendants' refusal to pay all of Plaintiff's earned wages.

32. Under the terms of Plaintiff's employment with Defendants, Plaintiff was entitled to be paid \$18.00/hour for each hour Plaintiff worked for Defendants between approximately December 2014 and June 2016. However, based upon Plaintiff being owed an average of Twelve (12) unpaid hours per week at the rate of \$18.00/hour from Defendants during a total of approximately Thirty-Six (36) between approximately December 2014 and June 2016—from Two (2) hours shorted by Defendants for worked performed by Plaintiff on Defendants' job sites and approximately Ten (10) hours of travel time between the job sites and Defendant TREMBLAY's home and/or origin of work—Plaintiff's unpaid wages total \$7,776.00 [12 Unpaid hours/week x \$18.00/hour x 36 weeks = \$7,776.00].

33. Plaintiff has requested Defendants pay Plaintiff for the full extent of his actual hours worked between approximately December 2014 and June 2016 in the amount of \$7,776.00 but Defendants have failed to make said payment.

34. Plaintiff has retained the undersigned counsel and pursuant to F.S. §448.08, Plaintiff is entitled to recover all reasonable attorneys' fees and costs incurred as a result of Defendant's failure to pay Plaintiff's wages.

35. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff, DANA AIELLO, demands judgment against Defendants, TREMBLAY PAINTING AND WATERPROOFING, INC., and ROBERT TREMBLAY, for the payment of all unpaid wages and related damages, reasonable attorneys' fees and costs, and for all proper relief including prejudgment interest.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: November 4, 2016

Respectfully submitted,

By: **s/KEITH M. STERN**
Keith M. Stern, Esquire
Florida Bar No. 321000
E-mail: employlaw@keithstern.com
Hazel Solis Rojas, Esquire
Florida Bar No. 91663
E-mail: hsolis@workingforyou.com
LAW OFFICE OF KEITH M. STERN, P.A.
One Flagler
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Telephone: (305) 901-1379
Facsimile: (561) 288-9031
Attorneys for Plaintiff

CONSENT TO JOIN FORM

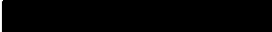
1. I consent to be a party plaintiff in a lawsuit against Defendant(s), Robert Tremblay and Tremblay Painting and Waterproofing Inc., as well as any related entities and individuals, to seek recovery for violations of the Fair Labor Standards Act (FLSA) pursuant to 29 U.S.C. §216(b) *et seq.*

2. I hereby designate the Law Office of Keith M. Stern, P.A. to represent me in bringing my FLSA claims and to make decisions on my behalf concerning the litigation and settlement of these claims. I agree to be bound by any adjudication by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s), or any other potentially responsible parties, to assert my FLSA claims and for this Consent Form to be filed in any such action.

Dana Aiello
Printed Name

Signature: Dana Michael Aiello
Dana Michael Aiello (Jun 19, 2016)

Email: 

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS DANA AIELLO, on behalf of himself and others similarly situated

DEFENDANTS TREMBLAY PAINTING AND WATERPROOFING, INC., and ROBERT TREMBLAY

(b) County of Residence of First Listed Plaintiff Broward (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) LAW OFFICE OF KEITH M. STERN, P.A., 14 NE 1st Avenue, Suite 800, Suite 800, Miami, FL 33132, Telephone No.: (305) 901-1379

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (See VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

a) Re-filed Case YES NO b) Related Cases YES NO

VII. CAUSE OF ACTION 29 U.S.C. 216 - Unpaid Overtime Compensation

VIII. REQUESTED IN COMPLAINT:

DATE November 4, 2016 SIGNATURE OF ATTORNEY OF RECORD s/ Keith M. Stern

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DANA AIELLO, on behalf of himself
and others similarly situated

Plaintiff(s)

v.

TREMBLAY PAINTING AND WATERPROOFING,
INC., and ROBERT TREMBLAY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TREMBLAY PAINTING AND WATERPROOFING, INC.
c/o Registered Agent, Michael Kerlew
2213 E. Atlantic Blvd.
Pompano Beach, FL 33062

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Law Office of Keith M. Stern, P.A.
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Telephone: (305) 901-1379
Facsimile: (561) 288-9031
E-mail: employlaw@keithstern.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DANA AIELLO, on behalf of himself
and others similarly situated

Plaintiff(s)

v.

TREMBLAY PAINTING AND WATERPROOFING,
INC., and ROBERT TREMBLAY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ROBERT TREMBLAY
4307 NW 70th Lane
Coral Springs, FL 33065

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Law Office of Keith M. Stern, P.A.
14 NE 1st Avenue, Suite 800
Miami, Florida 33132
Telephone: (305) 901-1379
Facsimile: (561) 288-9031
E-mail: employlaw@keithstern.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tremblay Painting and Waterproofing Hit with FLSA Class Action](#)
