

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No.

ROGER ANDREU, individually and
on behalf of all others similarly
situated under 29 U.S.C. § 216(b),

Plaintiffs,

v.

WASTE PRO OF FLORIDA, INC., a Florida corporation,
JOHN J. JENNINGS, individually, and
RUSSELL MACKIE, individually,

Defendants.

COMPLAINT

COMES NOW, Plaintiff, ROGER ANDREU on behalf of himself and all others similarly situated under 29 U.S.C. § 216(b) (“Plaintiff”), by and through undersigned counsel and hereby files this Complaint against the Defendants, WASTE PRO OF FLORIDA, INC., JOHN J. JENNINGS, and RUSSELL MACKIE (collectively “Defendants”) and alleges the following:

JURISDICTION & VENUE

1. Plaintiff, ROGER ANDREU (“Plaintiff” or “Andreu”), is an individual, a citizen of the State of Florida, and a resident of Broward County, Florida.
2. Defendant, WASTE PRO OF FLORIDA, INC. (“WPF”), is a for profit corporation organized and existing under the laws of the State of Florida with its principal place of business in Seminole County, Florida and is a citizen of the State of Florida.
3. Defendant, JOHN J. JENNINGS (“Jennings”), is an individual, a citizen of the State of Florida, and a resident of Seminole County, Florida.

4. Defendant, RUSSELL MACKIE (“Mackie”), is an individual, a citizen of the State of Florida, and a resident of Broward County, Florida.

5. This Court has subject matter jurisdiction over the instant action under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

6. This Court has personal jurisdiction over the Defendants in this action because the Defendants are citizens and residents of the State of Florida, transact business in the State of Florida and because the causes of action set forth in this Complaint arose in the State of Florida.

7. Venue is appropriate in the Southern District of Florida pursuant to 28 U.S.C. § 1391(b)(1).

ALLEGATIONS GIVING RISE TO ALL COUNTS

8. Since May 2014, Defendant WPF has been an “employer” as defined by the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, and an “enterprise engaged in commerce” because WPF, a waste disposal, collection, and transportation business, has regularly employed at least two employees who handle materials such as grapple trucks, rear loaders, and roll off trucks manufactured outside of Florida by Mack Trucks, Inc. and Kenworth, a Paccar Company, integral to WPF’s commercial purpose and business and necessary for picking up/loading/collecting garbage, bulk waste, solid waste, recyclables, trash, and other waste products (hereinafter generally referred to as “waste products”) from residential and commercial locations and transporting said waste products over local roads and interstate highways and delivering said waste products to landfills and other waste management facilities in Florida for disposal and incineration.

9. Since May 2014, Defendant WPF’s gross volume of sales or business has exceeded \$500,000.00 annually.

10. From on or about October 2013 until his resignation on May 2, 2017, Plaintiff was an employee of Defendants.

11. Plaintiff was a ‘helper’ for the first two months of his employment with Defendants. As a

helper, Plaintiff rode on the back of Defendants' trucks and helped the truck driver pick up, transport, and deliver waste products in Broward County, Florida.

12. From on or about December 2013/January 2014 until on or about December 2015, Plaintiff was employed by Defendants as a bulk route and roll off truck driver in WPF's Pembroke Pines, Florida division.

13. From on or about December 2015/January 2016 until on or about September 2016, Plaintiff was employed by Defendants as a roll off, grapple, and rabbit truck driver in WPF's Pompano Beach, Florida division.

14. From on or about September 2016 until on or about May 2017, Plaintiff was employed by Defendants as lead truck driver for WPF's Pompano Beach, Florida division.

15. While employed by Defendants as a truck driver, Plaintiff drove WPF's trucks containing waste products from residential and commercial locations to landfills and waste facilities for disposal and incineration.

16. Plaintiff drove WPF's trucks containing waste products primarily in Broward County, Florida, and occasionally in Palm Beach County, Florida.

17. Plaintiff never drove WPF's trucks outside of the State of Florida and never transported waste products across state lines.

18. At all times material, Jennings was Plaintiff's "employer" as defined by 29 U.S.C. § 203(d) because Jennings managed, owned, and/or operated WPF and regularly exercised authority to: (a) hire and fire WPF's employees; (b) determine the work schedules of WPF's employees including Plaintiff; (c) set the rate of pay for WPF's employees including Plaintiff; and (d) control the finances and day to day operations of WPF.

19. At all times material, Mackie was Plaintiff's "employer" as defined by 29 U.S.C. § 203(d) because Jennings managed and/or operated WPF and regularly exercised authority to: (a) hire and

fire WPF's employees; (b) determine the work schedules of WPF's employees including Plaintiff; (c) set the rate of pay for WPF's employees including Plaintiff; and (d) control the finances and day to day operations of WPF.

20. At all times material, Defendants did not pay Plaintiff and Defendants' employees similarly situated to Plaintiff overtime wages in accordance with the FLSA.

21. At all times material, Defendants paid Plaintiff and Defendants' employees similarly situated to Plaintiff a day rate.

22. Despite paying Plaintiff and Defendants' employees similarly situated to Plaintiff a day rate, Defendants did not pay Plaintiff and Defendants' employees similarly situated to Plaintiff overtime in accordance with the FLSA and 29 C.F.R. § 778.112.

23. During Plaintiff's employment with Defendant, Defendant WPF kept daily time logs for Plaintiff.

24. During Plaintiff's employment with Defendant, Plaintiff clocked in and clocked out on a daily basis.

25. At all times material, Defendants signed off on Plaintiff's timesheets reflecting the total amount of hours worked by Plaintiff in a two-week period before Plaintiff was paid for those hours.

26. At all times material, Plaintiff's duties did not necessitate irregular hours of work.

27. At all times material, Defendants did not have a bona fide contract with Plaintiff in accordance with 29 U.S.C. § 207(f).

28. At all times material, Defendants' employees regularly complained to Defendants and to each other about the long hours and lack of overtime pay.

29. Plaintiff has complied with all conditions precedent to bringing this suit.

COUNT I
VIOLATION OF FAIR LABOR STANDARDS ACT (“FLSA”)
Against All Defendants

30. Plaintiff re-avers and re-alleges all of the allegations set forth in Paragraphs 1 through 29 of this Complaint as if set forth herein at length.

31. This is an action to recover unpaid overtime compensation under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*

32. This case is brought as a collective action under 29 U.S.C. § 216(b) as it is believed that the Defendants have employed several other similarly situated employees like Plaintiff who have not been paid overtime and/or minimum wages for work performed in excess of 40 hours per week within the three- year period immediately preceding the date of this Complaint’s filing.

33. From May 9, 2014 until May 2, 2017, Plaintiff worked an average of sixty-two (62) hours per week for Defendants and was paid an average of \$22.58 per hour but was never paid at a rate not less than one and one-half times Plaintiff’s regular rate of pay for any hours worked in excess of 40 hours in one week as required by the FLSA.

34. During his employment with Defendants, Plaintiff asked Defendant Mackie about being paid overtime compensation. In response to Plaintiff’s overtime inquiry, Mackie told Plaintiff that employees in Plaintiff’s line of business were paid a day rate instead of traditional overtime wages and that “it is what it is, that’s how it works”.

35. Defendants knew or had reason to believe that Plaintiff regularly worked more than 40 hours per week without being paid the proper overtime rate.

36. Defendants willfully and intentionally refused to pay Plaintiff’s overtime wages as required by the FLSA because Defendants knew of the overtime requirements of the FLSA and recklessly failed to investigate whether Defendants’ payroll practices were in accordance with the FLSA.

37. At present, Defendants remain owing Plaintiff overtime wages for the following time

period Plaintiff was employed by Defendants: May 9, 2014 – May 2, 2017.

38. Plaintiff is entitled to: (i) time-and-a-half overtime pay and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*

39. Plaintiff seeks recovery of damages as referenced above and further seeks interest, costs, and reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b).

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in favor of Plaintiff and against Defendants, jointly and severally, in the amount of Plaintiff's unpaid overtime compensation to be proven at trial and an additional equal amount as liquidated damages, Plaintiff's reasonable attorneys' fees, and costs of this action pursuant to 29 U.S.C. 216(b); interest; and any such further relief as this Court deems just and equitable under the circumstances.

DEMAND FOR JURY TRIAL

40. Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED this 9th day of May, 2017.

Respectfully submitted,



Marc E. Rosenthal, Esq.

ROSENBERG CUMMINGS & EDWARDS PLLC

Counsel for Plaintiff

802 NE 20th Avenue

Fort Lauderdale, Florida 33304

(954) 769-1344

Marc@RosenbergCummings.com

Florida Bar Number: 117561

JS 44 (Rev. 2/08)

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 THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

Roger Andreu, individually and on behalf of all others similarly situated under 29 U.S.C. § 216(b),

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Marc Edward Rosenthal, Esq.
Rosenberg Cummings & Edwards PLLC
802 NE 20th Ave. Fort Lauderdale, Florida 33304
(954) 769-1344

DEFENDANTS

Waste Pro of Florida, Inc., a Florida corporation, John J. Jennings, individually, and Russell Mackie, individually

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT 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)

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

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

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- 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

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO
JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

Failure to pay overtime in violation of the Fair Labor Standards Act.

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

Marc E. Rosenthal

DATE

May 9, 2017

FOR OFFICE USE ONLY

AMOUNT _____

RECEIPT # _____

IFP _____

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

UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF FLORIDA

ROGER ANDREU, individually and on behalf of all others similarly situated under 29 U.S.C. § 216(b),

Plaintiff(s)

v.

WASTE PRO OF FLORIDA, INC., a Florida corporation, JOHN J. JENNINGS, individually, and RUSSELL MACKIE, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

JOHN J. JENNINGS
100 AMBERWOOD COURT
LONGWOOD, FLORIDA 32779

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:

Marc Edward Rosenthal, Esq.
Rosenberg Cummings & Edwards PLLC
802 NE 20th Avenue
Fort Lauderdale, Florida 33304

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

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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

ROGER ANDREU, individually and on behalf of all others similarly situated under 29 U.S.C. § 216(b),

Plaintiff(s)

v.

WASTE PRO OF FLORIDA, INC., a Florida corporation, JOHN J. JENNINGS, individually, and RUSSELL MACKIE, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

WASTE PRO OF FLORIDA, INC.
C/O MALENIE VELEZ
2101 W. SR 434
SUITE 315
LONGWOOD, FLORIDA 32779

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:

Marc Edward Rosenthal, Esq.
Rosenberg Cummings & Edwards PLLC
802 NE 20th Avenue
Fort Lauderdale, Florida 33304

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CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

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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: [Former Employee Dumps Wage Class Action on Waste Pro of Florida](#)
