

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

Case No. \_\_\_\_\_

JOHNNIE L. BAILEY, and other similarly	)
situated individuals,	)
	)
Plaintiff(s),	)
	)
v.	)
	)
BROTEN GARAGE DOOR SALES, LLC	)
f/k/a BROTEN GARAGE DOOR SALES,	)
INC. and GREGG D. DAVIS,	)
	)
Defendants.	)
	)
_____	)

**COMPLAINT**  
**(OPT-IN PURSUANT TO 29 U.S.C § 216(B))**

Plaintiffs JOHNNIE L. BAILEY (“Plaintiff” or “Bailey”) and other similarly situated individuals sue defendants BROTEN GARAGE DOOR SALES, LLC f/k/a BROTEN GARAGE DOOR SALES, INC. and GREGG D. DAVIS (collectively the “Defendants”) and allege:

**JURISDICTION**

1. This is an action to recover money damages for unpaid overtime wages and for retaliation under the laws of the United States<sup>1</sup>. This is also an action for race discrimination under 42 U.S.C. § 1981 (“Section 1981”), for retaliatory discharge under Fla. Stat. § 440.205, and for violations of Florida common law. This Court has jurisdiction pursuant to the Fair Labor

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<sup>1</sup> During or after discovery, Plaintiff will likely amend this complaint to include counts for unpaid wages. In essence, the Plaintiff has reason to believe that the Defendants made illegal deductions to his paychecks and forced Plaintiff to pay tolls from his own pocket. If proven, the Defendants should be liable to Plaintiff for additional wages and other damages. In addition, the Plaintiff is also filing a charge of discrimination with the EEOC. Once the EEOC issues its right to sue, the Plaintiff will move to amend this complaint to include counts for race discrimination and retaliation under federal and state law.

Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”). The Court has supplemental jurisdiction over the Florida law claims.

### VENUE

2. Plaintiff is a resident of Broward County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.

3. BROTEN GARAGE DOOR SALES (the “Corporate Defendant” or “Brotten”) and GREGG D. DAVIS (the “Individual Defendant” or “Davis”), are a Florida company and a Florida resident, respectively, having their main place of business in Broward County, Florida, where Plaintiff worked for Defendants, and at all times material hereto were and are engaged in interstate commerce. The Individual Defendant, upon information and belief, resides in Broward County, Florida.

### THE PARTIES

4. Plaintiff is a black male.

5. Plaintiff worked as a garage installer/service technician for the Corporate Defendant from October 18, 2007 until November 13, 2017<sup>2</sup>.

6. Plaintiff, at all times relevant, was an “employee” under the Act, Section 1981 and Florida law.

7. Brotten is a company in the business of installing and servicing garage doors throughout Florida.

8. At all times relevant and material, Brotten was Plaintiff’s employer under Section 1981, the Act, and Florida law.

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<sup>2</sup> Plaintiff also worked for the Corporate Defendant for approximately 10 years in 1988 or 1989.

9. Defendants are and were responsible for the acts of its command staff, supervisors and officers, who were acting within the scope of their employment, pursuant to a policy, custom and/or practice of race discrimination.

#### **GENERAL ALLEGATIONS**

10. Plaintiff is a Black male.

11. Plaintiff was an exemplary employee and at all times performed his work admirably and to the Defendants' standards.

12. Defendants' employees in supervisory positions such as managers and sales persons are not black.

13. Davis was Plaintiff's supervisor and he is white Caucasian.

14. Plaintiff's co-workers who are similarly situated employees, but who are not black, have higher salaries and better terms of employment than Plaintiff.

15. Defendants require black employees to use outdoors portable toilets as restrooms. Defendants only allow non-black and white employees to use restrooms, with air conditioner, inside their building.

16. Close to his termination, Plaintiff complained about the inequality in benefits to black employees and also refused to use the portable toilets offered by Defendants, while demanding that he also be allowed in the air-conditioned bathrooms. In response, Plaintiff's supervisors told him, "here you look out for your own kind".

17. On or about September 27, 2017, Plaintiff sustained an injury to his left shoulder at work. Plaintiff immediately reported his accident to the Defendants.

18. Thereafter, Plaintiff began receiving medical treatment under the worker's compensation laws.

19. Since Plaintiff's accident, Davis continuously and repeatedly demanded that Plaintiff don't go to his appointments with his worker's compensation doctors. Plaintiff always responded that he needed to go because he was hurt and required additional treatment.

20. On or about early November of 2017, Davis accused Plaintiff's co-worker of theft and also accused Mr. Bailey of being a co-conspirator, which Plaintiff vehemently denied. In response, Davis ordered Plaintiff to take a "lie-detector", which Plaintiff refused.

21. On or about November 13, 2017, David suspended Plaintiff "until further notice".

22. Defendants have not re-instated Plaintiff's employment since then.

23. Defendants have fired or constructively discharged Plaintiff.

**COUNT I: WAGE AND HOUR VIOLATION BY  
BROTEN GARAGE DOOR SALES (OVERTIME)**

24. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-3 above as if set out in full herein.

25. This action is brought by Plaintiff and those similarly situated to recover from the Corporate Defendant unpaid overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorneys' fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees . . . for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."

26. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 216(b). The Corporate Defendant is and, at all times pertinent to this Complaint, was engaged in interstate commerce. At all times pertinent to this Complaint, the Corporate

Defendant operates as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and the Corporate Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees. Upon information and belief, the annual gross revenue of the Corporate Defendant was at all times material hereto in excess of \$500,000 per annum, and/or Plaintiff and those similarly situated, by virtue of working in interstate commerce, otherwise satisfy the Act's requirements.

27. By reason of the foregoing, the Corporate Defendant is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) and/or Plaintiff and those similarly situated was and/or is engaged in interstate commerce for the Corporate Defendant. The Corporate Defendant's business activities involve those to which the Act applies. The Corporate Defendant is a GARAGE DOOR sales company and, through its business activity, affects interstate commerce. The Plaintiff's work for the Corporate Defendant likewise affects interstate commerce. Plaintiff was employed by the Corporate Defendant as a garage door installer for the Corporate Defendant's business.

28. While employed by the Corporate Defendant, Plaintiff worked approximately an average of **70** hours per week without being compensated at the rate of not less than one and one half times the regular rate at which he was employed. Plaintiff was employed as a garage door installer performing the same or similar duties as that of those other similarly situated garage

door installers whom Plaintiff observed working in excess of 40 hours per week without overtime compensation.

29. Plaintiff worked for the Corporate Defendant from approximately November 18, 2007 through November 13, 2017. In total, Plaintiff worked approximately **151** compensable weeks under the Act, or **151** compensable weeks if we count 3 years back from the filing of the instant action.

30. The Corporate Defendant paid Plaintiff on average approximately **\$15** per hour.

31. However, the Corporate Defendant did not properly compensate Plaintiff for hours that Plaintiff worked in excess of 40 per week.

32. Plaintiff seeks to recover unpaid overtime wages accumulated from the date of hire and/or from 3 (three) years back from the date of the filing of this Complaint.

33. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this Complaint, Plaintiff's good faith estimate of unpaid overtime wages is as follows:

**a. Actual Damages: \$101,925**

i. Calculation:  $\$15 \times 1.5 \times 30 \times 151 = \$101,925$

**b. Liquidated Damages: \$101,925**

**c. Total Damages: \$203,850** plus reasonable attorneys' fees and costs of suit.

34. At all times material hereto, the Corporate Defendant failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 et seq. in that Plaintiff and those similarly situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the Corporate Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided

in the Act. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of the Corporate Defendant who are and who were subject to the unlawful payroll practices and procedures of the Corporate Defendant and were not paid time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

35. The Corporate Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages and remains owing Plaintiff and those similarly situated these overtime wages since the commencement of Plaintiff's and those similarly situated employees' employment with the Corporate Defendant as set forth above, and Plaintiff and those similarly situated are entitled to recover double damages. The Corporate Defendant never posted any notice, as required by Federal Law, to inform employees of their federal rights to overtime and minimum wage payments.

36. The Corporate Defendant willfully and intentionally refused to pay Plaintiff overtime wages as required by the laws of the United States as set forth above and remains owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with the Corporate Defendant as set forth above.

37. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and those similarly situated request that this Honorable Court:

- A. Enter judgment for Plaintiff and others similarly situated and against the Corporate Defendant on the basis of the Corporate Defendant's willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid wages and

- overtime compensation for hours worked in excess of forty weekly; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
  - D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
  - E. Grant such other and further relief, as this Court deems equitable and just.

**JURY DEMAND**

Plaintiff and those similarly situated demand trial by jury of all issues so triable as of right.

**COUNT II: WAGE AND HOUR VIOLATION  
BY GREGG D. DAVIS (OVERTIME)**

38. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-17 above as if set out in full herein.

39. At the times mentioned, the Individual Defendant was, and is now, the owner and/or officer of the Corporate Defendant. The Individual Defendant was an employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the Act [29 U.S.C. § 203(d)], in that this defendant acted directly or indirectly in the interests of the Corporate Defendant in relation to the employees of the Corporate Defendant, including Plaintiff and others similarly situated. The Individual Defendant had operational control of the Corporate Defendant, was involved in the day-to-day functions of the Corporate Defendant, provided Plaintiff with his work schedule, directly supervised Plaintiff, and is jointly liable for Plaintiff's damages.

40. The Individual Defendant is and was at all times relevant a person in control of the Corporate Defendant's financial affairs and can cause the Corporate Defendant to compensate (or not to compensate) its employees in accordance with the Act.

41. The Individual Defendant willfully and intentionally caused Plaintiff not to receive overtime compensation as required by the laws of the United States as set forth above



and remains owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with the Corporate Defendant as set forth above.

42. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and those similarly situated request that this Honorable Court:

- A. Enter judgment for Plaintiff and others similarly situated and against the Individual Defendant on the basis of the Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid wages and overtime compensation for hours worked in excess of forty weekly; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just.

**JURY DEMAND**

Plaintiff and those similarly situated demand trial by jury of all issues so triable as of right.

**COUNT III: INVASION OF PRIVACY – APPROPRIATION  
AGAINST BROTEN GARAGE DOOR SALES, INC.**

43. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-3 above as if set out in full herein.

44. Fla. Stat. § 540.08 states, in part:

**Unauthorized publication of name or likeness.—**

**(1) No person shall publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:**

- (a) Such person; or**
- (b) Any other person, firm or corporation authorized in writing by such person to license the commercial use of her or his name or likeness; or**
- (c) If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of her or his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of her or his surviving spouse and surviving children.**

**(2) In the event the consent required in subsection (1) is not obtained, the person whose name, portrait, photograph, or other likeness is so used, or any person, firm, or corporation authorized by such person in writing to license the commercial use of her or his name or likeness, or, if the person whose likeness is used is deceased, any person, firm, or corporation having the right to give such consent, as provided hereinabove, may bring an action to enjoin such unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.**

45. The Corporate Defendant is using Plaintiff's picture on its website and on marketing materials.

46. The use of Plaintiff's picture in the Corporate Defendant's website is an unwarranted appropriation or exploitation of Plaintiff's personality.

47. The Corporate Defendant posted a picture of Plaintiff without Plaintiff's authorization or permission. Alternatively, the posting of Plaintiff's picture in the Corporate Defendant's website after Plaintiff's discharge has not been authorized by Plaintiff.

48. Defendant has violated Fla. Stat. § 540.08.

49. As a direct and proximate cause of the Corporate Defendant's actions, the Plaintiff has been damaged.

**WHEREFORE**, Plaintiff is entitled to recover damages in an amount to be determined at trial, including the Corporate Defendant's profits, losses sustained by Plaintiff due to the

Corporate Defendant's conduct, pain and suffering, an injunction against the Corporate Defendant, and costs of this action, as well as any other and further relief this Court deems equitable and just.

**JURY DEMAND**

Plaintiff demands trial by jury of all issues so triable as of right.

**COUNT IV:  
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)  
RETALIATORY DISCHARGE AGAINST ALL DEFENDANTS**

50. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-9 and 21-42 above as if set out in full herein.

51. The Defendants willfully and intentionally refused to pay Plaintiff his applicable overtime wages as required by the laws of the United States and remain owing Plaintiff these wages as set forth above.

52. 29 U.S.C. § 206(a)(3) states that it shall be unlawful for any person "to discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in such proceeding . . ."

53. Plaintiff complained about his unpaid overtime wages to the Defendants close to the time of his termination. As a result, on or about November 13, 2017, Plaintiff was either constructively terminated, or outright fired.

54. The motivating factor, which caused Plaintiff's discharge as described above, was his complaint seeking the payment of overtime wages from the Defendants. In other words, Plaintiff would not have been fired but for his complaint about unpaid wages to the Defendants.

55. The Defendants' termination of Plaintiff was in direct violation of 29 U.S.C. § 215(a)(3) and, as a direct result, Plaintiff has been damaged.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that this Honorable Court:

A. Enter a judgment against the Defendants for all back wages from the date of discharge to the present date and an equal amount of back wages as liquidated damages, attorneys' fees, costs, and;

B. Reinstatement and promotion and injunctive relief prohibiting the Defendants from discriminating in the manner described above, emotional distress and humiliation, and pain and suffering, front wages, as well as other damages recoverable by law under 29 U.S.C. § 216(b).

**JURY DEMAND**

Plaintiff and those similarly situated demand trial by jury of all issues so triable as of right.

**COUNT V: VIOLATION OF 42 U.S.C. § 1981  
(DISCRIMINATION) AGAINST ALL DEFENDANTS**

56. Plaintiff adopts and incorporates by reference the allegations in paragraphs 1-16 and 20-23 of this Complaint.

57. Mr. Bailey is a member of a protected class of black citizens.

58. At all times relevant, Mr. Bailey was in a contractual relationship with the Defendants within the meaning of 42 U.S.C.A. § 1981, as amended.

59. During the course of Plaintiff's employment with the Defendants, the Defendants have violated Plaintiff's rights by depriving him of his right to the enjoyment of all benefits,

privileges, terms and conditions of his employment contract as is enjoyed by Caucasian or non-black citizens, in violation of 42 U.S.C.A. § 1981(b), as amended.

60. During the course of Mr. Bailey's employment with the Defendants, Plaintiff has not enjoyed the same benefits, privileges, terms and conditions of employment, as have Caucasian or non-black employees of the Defendants.

61. Defendants' treatment, practices and policies directed toward Mr. Bailey, as more fully described in paragraphs 10-16 and 20-23 of this Complaint, denied Bailey the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by Caucasian or non-black citizens, in violation of 42 U.S.C.A. § 1981, as amended.

62. Defendants' treatment, practices and policies directed toward Mr. Bailey, as more fully described in paragraphs 10-16 and 20-23, denied Bailey the right to make and enforce contracts as enjoyed by Caucasian or non-black citizens, in violation of 42 U.S.C.A. § 1981, as amended.

63. Through its actions and treatment of Bailey, the Defendants intended to discriminate against Bailey on the basis of Bailey's race.

64. During the course of Bailey's employment with the Defendants, Bailey has been subjected to a discriminatory, hostile and offensive work environment because of his race, as more fully described in paragraphs 10-16 and 20-23 of this Complaint.

65. Defendants, at all times, have had knowledge of the discriminatory acts and conduct by Davis.

66. Despite Bailey's complaints and the Defendants' first-hand knowledge of the discriminatory acts and/or conduct, the Defendants took no appropriate remedial action.

67. The discriminatory acts of the Defendants were willful, wanton, and reckless.

68. As a direct and proximate result of the foregoing, Plaintiff has suffered embarrassment, humiliation, emotional distress, and other forms of damage.

69. Plaintiff has suffered damages of an on-going and continuous nature.

**WHEREFORE**, Plaintiff requests that this Honorable Court:

- A. Enter judgment in Plaintiff's favor and against the Corporate Defendant and against Davis for their violations of 42 U.S.C.A. § 1981, as amended;
- B. Award Plaintiff actual damages suffered;
- C. Award Plaintiff compensatory damages under 42 U.S.C.A. § 1981 for the embarrassment, anxiety, humiliation and emotional distress Plaintiff has suffered;
- D. Award Plaintiff prejudgment interest on his damages award;
- E. Award Plaintiff punitive damages according to proof;
- F. Enjoin the Corporate Defendant's and Davis' officers, agents, employees and anyone acting in concert with them, from discriminating, harassing and retaliating against Plaintiff and any employee;
- G. Award Plaintiff reasonable costs and attorney's fees; and
- H. Grant Plaintiff such other and further relief as this court deems equitable and just.

**JURY DEMAND**

Plaintiff demands trial by jury of all issues so triable as of right.

**COUNT VI: VIOLATION OF 42 U.S.C. § 1981 (RETALIATION)**

70. Plaintiff adopts and incorporates by reference the allegations in paragraphs 1-16, 20-23 and 56-69 of this Complaint.

71. Plaintiff is a black male.

72. At all times relevant, Plaintiff was in a contractual relationship with the Defendants within the meaning of 42 U.S.C.A. § 1981, as amended.

73. During the course of Plaintiff's employment with these Defendants, these Defendants have violated Plaintiff's rights by depriving him of his right to the enjoyment of all benefits, privileges, terms and conditions of his employment contract as is enjoyed by non-black employees, in violation of 42 U.S.C.A. § 1981(b), as amended.

74. During the course of Plaintiff's employment with the Defendants, Plaintiff has not enjoyed the same benefits, privileges, terms and conditions of employment, as have non-black employees of these Defendants.

75. Plaintiff objected to being treated differently because he is black and in response the Defendants fired or constructively fired Plaintiff on or about November 13, 2017.

76. By firing the Plaintiff, the Defendants retaliated against Plaintiff on the basis of his race.

77. Defendants' firing of Plaintiff denied Plaintiff the right to make and enforce contracts as enjoyed by non-black citizens, in violation of 42 U.S.C.A. § 1981, as amended.

78. As a direct and proximate result of the foregoing, Plaintiff has suffered embarrassment, humiliation, emotional distress, and other forms of damage.

79. Defendant's discriminatory conduct was willful, wanton and reckless.

80. Plaintiff has suffered damages.

**WHEREFORE**, Plaintiff requests that this Honorable Court:

- A. Enter judgment in Plaintiff's favor and against the Defendants for their violations of 42 U.S.C.A. § 1981, as amended;
- B. Award Plaintiff actual damages suffered;
- C. Award Plaintiff compensatory damages under 42 U.S.C.A. § 1981 for the embarrassment, anxiety, humiliation and emotional distress Plaintiff has suffered;
- D. Award Plaintiff prejudgment interest on his damages award;

- E. Award Plaintiff punitive damages according to proof;
- F. Enjoin the Defendants officers, agents, employees and anyone acting in concert with them, from discriminating, harassing and retaliating against Plaintiff and any employee;
- G. Award Plaintiff reasonable costs and attorney's fees; and
- H. Grant Plaintiff such other and further relief as this court deems equitable and just.

**JURY DEMAND**

Plaintiff demands trial by jury of all issues so triable as of right.

**COUNT VII: VIOLATION OF FLA. STAT. § 440.205  
(RETALIATION AGAINST BROTEN ONLY)**

81. Plaintiff adopts and incorporates by reference the allegations in paragraphs 1-9 and 17-23 of this Complaint.

82. On or about September 27, 2017, the Plaintiff suffered a work-related injury, namely, he injured his left shoulder. The injury happened while Plaintiff was working for the Defendant.

83. The injury alleged above required medical treatment.

84. After the work-related accident as described above, the Plaintiff reported his injuries to the Defendant and requested medical treatment.

85. On or about November 13, 2017, Broten suspended Plaintiff indefinitely and did not allow him to re-commence work.

86. Broten has fired or constructively discharged Plaintiff.

87. Plaintiff's work prior to his discharge was satisfactory or more than satisfactory and the sole apparent reason for the termination of Plaintiff's employment was that Plaintiff sought or attempted to seek compensation under the Workers' Compensation Law, as Plaintiff was entitled to do.



88. A motivating factor which, caused the Plaintiff's discharge as described above, was the request and/or attempted request for worker's compensation benefits pursuant to Fla. Stat. §§ 440 et. seq. Alternatively, Plaintiff would not have been fired but for his claiming worker's compensation benefits as described above.

89. Defendant's termination of the Plaintiff was in direct violation of Fla. Stat. § 440.205 and, as a direct result, the Plaintiff has been damaged.

90. By reason of Defendant's wrongful discharge of Plaintiff, Plaintiff has been damaged in that Plaintiff has suffered lost wages and has suffered emotional distress.

91. The Defendant's conduct in wrongfully discharging Plaintiff was willful, wanton, and in reckless disregard of Plaintiff's rights and therefore Plaintiff is entitled to punitive damages.

**WHEREFORE**, the Plaintiff respectfully requests judgment against Broten for all back wages from the date of discharge to the present date; reinstatement and promotion; injunctive relief prohibiting Broten from wrongfully discharging in the manner described above; front wages; and for any and all other relief that this Court may deem just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury of all issues so triable.

Dated: January 2, 2018.

Respectfully submitted,

By: /s/ R. Martin Saenz  
R. Martin Saenz, Esquire  
Fla. Bar No.: 0640166  
Email: msaenz@saenzanderson.com  
SAENZ & ANDERSON, PLLC  
20900 NE 30<sup>th</sup> Avenue, Ste. 800  
Aventura, Florida 33180  
Telephone: (305) 503-5131

Facsimile: (888) 270-5549

# 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.)

**I. (a) PLAINTIFFS**

JOHNNIE L. BAILEY, and other similarly situated individuals,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

R. Martin Saenz, Esq.; Saenz & Anderson, PLLC, 20900 NE 30th Ave., Ste. 800, Aventura, FL 33180; (305) 503-5131

**DEFENDANTS**

BROTEN GARAGE DOOR SALES, LLC f/k/a BROTEN GARAGE DOOR SALES, INC. and GREGG D. DAVIS,

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

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

Attorneys (If Known)

**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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| 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 (Excludes 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	<p><b>PERSONAL INJURY</b></p> <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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			<b>PROPERTY RIGHTS</b>		
			<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		
		<b>LABOR</b>	<b>SOCIAL SECURITY</b>		
		<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<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))		
		<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>		
		<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
<p><b>REAL PROPERTY</b></p> <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	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty			

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Fair Labor Standards Act, 29 U.S.C. § 201-219; 42 U.S.C. § 1981**  
 Brief description of cause:  
**Unpaid wages and employment discrimination**

**VII. REQUESTED IN COMPLAINT:**

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: January 2, 2018 SIGNATURE OF ATTORNEY OF RECORD: s/ R. Martin Saenz, Esq.

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOHNNIE L. BAILEY, and other similarly situated individuals,

Plaintiff(s)

v.

BROTEN GARAGE DOOR SALES, LLC f/k/a BROTEN GARAGE DOOR SALES, INC. and GREGG D. DAVIS,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) GREGG D. DAVIS 886 S. ANDREWS AVE POMPANO BEACH, FL 33069

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: R. Martin Saenz, Esq. Saenz & Anderson, PLLC 20900 NE 30th Ave., Ste. 800 Aventura, FL 33180

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:

**Print**

**Save As...**

**Reset**

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

JOHNNIE L. BAILEY, and other similarly situated individuals,

Plaintiff(s)

v.

BROTEN GARAGE DOOR SALES, LLC f/k/a BROTEN GARAGE DOOR SALES, INC. and GREGG D. DAVIS,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) BROTEN GARAGE DOOR SALES, LLC f/k/a BROTEN GARAGE DOOR SALES, INC. c/o LAMAY, KRISTE K 886 S. ANDREWS AVE POMPANO BEACH, FL 33069

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: R. Martin Saenz, Esq. Saenz & Anderson, PLLC 20900 NE 30th Ave., Ste. 800 Aventura, FL 33180

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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:

**Print**

**Save As...**

**Reset**



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Black Employee Accuses Broten Garage Door Sales of Discrimination, Unlawful Pay Practices](#)

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