

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ILEDIEU CIREUS,
on behalf of himself and others similarly
situated,

Plaintiff,

vs.

COLLECTIVE ACTION

GIANT GLASS & MIRROR, INC.,
a Florida Corporation, and JOSEPH M.
MARTUCCI, an individual, jointly and
severally,

Defendants.

COMPLAINT

INTRODUCTION

1. This is a collective action brought pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. (hereinafter “FLSA”), to recover unpaid overtime compensation owed to Plaintiff ILEDIEU CIREUS, and all others similarly situated to him who were formerly or are currently employed as a glass worker, installer, helper, driver, or general laborer by Defendants GIANT GLASS & MIRROR, INC., (hereinafter, “GIANT GLASS”) and JOSEPH M. MARTUCCI.

2. Pursuant to the FLSA, Plaintiff, on behalf of himself and all others similarly situated to them, seeks unpaid overtime compensation, liquidated damages or pre-judgment interest, post-judgment interest, attorney’s fees and costs from Defendants GIANT GLASS and JOSEPH M. MARTUCCI. Plaintiff, on his own behalf, seeks damages for unlawful retaliation for being terminated and assaulted after refusing to sign a typed statement with false information presented to him by Defendants, which was related to ongoing litigation between a former employee and

Defendants whereby the former employee was seeking overtime compensation, in violation of 29 U.S.C. § 215.

3. Plaintiff also requests the Court to authorize concurrent notice to all persons who were formerly or are currently employed by Defendants GIANT GLASS and JOSEPH M. MARTUCCI, and who were paid in a similar manner as Plaintiff, or who were so employed during the Liability Period, informing them of the pendency of this action and their right to opt into this lawsuit pursuant to the FLSA, 29 U.S.C. §216(b).

JURISDICTION

4. This Court has jurisdiction over this action pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. §216(b), and 28 U.S.C. §1331 and 1337.

VENUE

5. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in Broward County, Florida and within the Southern District of Florida.

PARTIES

6. Plaintiff ILEDIEU CIREUS (hereinafter “Plaintiff” or “CIREUS”) was, at all material times, a resident of Broward County, Florida and was employed as an hourly wage glass worker for Defendants GIANT GLASS and JOSEPH M. MARTUCCI in their glass design and fabrication business in Broward County, Florida, until his separation from employment on August 2, 2017.

7. Defendant JOSEPH M. MARTUCCI, (hereinafter “MARTUCCI”), who resides in the Southern District of Florida, was, and still is, an owner and/or operator of Defendant GIANT GLASS.

8. Defendant MARTUCCI acted and acts directly in the interests of Defendant GIANT

GLASS, in relation to its employees, including the Plaintiff and all others similarly situated, in that MARTUCCI hired glass workers, set their pay rate, determined their work schedule, and ultimately terminated many employees. Thus, MARTUCCI was and is an employer within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

9. At all times material, Plaintiff was an employee of Defendants GIANT GLASS and MARTUCCI within the meaning of the FLSA.

10. At all times material, during Plaintiff's employment with Defendants GIANT GLASS and MARTUCCI, Plaintiff was engaged in commerce or in the production of goods for commerce. To wit: Plaintiff handled goods and materials that traveled in interstate commerce and utilized tools and equipment that were manufactured in other states outside of Florida.

11. At all times material, Defendant GIANT GLASS was an "enterprise engaged in commerce" within the meaning of 29 U.S.C. § 203(s)(1) with annual gross sales in excess of \$500,000 within the meaning of the FLSA. Defendant, GIANT GLASS is a Florida Corporation doing business throughout South Florida, and is an enterprise engaged in an industry affecting commerce, is an employer as defined by 29 U.S.C. § 203(d) and (s)(1), in that it has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and it is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) which has employees subject to the provisions of the FLSA, 29 U.S.C. § 207. At all times pertinent to this Complaint, GIANT GLASS operates as an organization which sells and/or markets its services and/or goods to customers throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and GIANT GLASS obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses

telephonic transmissions going over state lines to do their business, transmit funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

FACTUAL ALLEGATIONS

12. The allegations in Paragraphs 1 through 11 are incorporated as if fully stated herein.

13. Plaintiff is a non-exempt former employee of Defendants GIANT GLASS and MARTUCCI who worked as an hourly wage glass worker for Defendants' glass design and fabrication business located in Broward County, Florida.

14. From on or about March 2014 until August 2, 2017, Plaintiff worked more than 40 hours per week during nearly every week of his employment, without being paid the federally mandated wage for overtime. Specifically, Plaintiff was paid only straight time and was not paid for all hours worked.

15. Defendants violated the FLSA by failing to pay Plaintiff for all overtime hours worked in excess of forty hours per week at the applicable time and one-half rate.

16. Defendants pay all of their hourly wage employees in the same fashion. There are at least twenty-five other current and former employees who were paid only straight time for overtime hours, and are thus owed the half-time premium as well. In addition, these similarly situated individuals were not paid for all hours worked, and are therefore owed the full time and half overtime rate for many, if not all of these hours.

17. Defendants' time keeping practices do not comply with the FLSA because their workers compensable time is docked one hour each day for a meal break that employees do not take.

LEGAL CLAIMS

COUNT I (as to Plaintiff and those similarly situated):
Failure to Pay Overtime Wages in Violation of 29 U.S.C. § 207 by All Defendants

18. The allegations in Paragraphs 1 through 17 are realleged and fully incorporated by reference herein.

19. By its actions alleged above, Defendants GIANT GLASS and MARTUCCI, willfully, knowingly, and/or recklessly violated the provisions of FLSA, which requires overtime wages to be paid to non-exempt employees, including those set forth in the provisions of 29 U.S.C. § 207.

20. As a result of the unlawful acts of Defendants, Plaintiff and all persons similarly situated to him have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts in addition to liquidated damages or prejudgment interest, post-judgment interest, attorney's fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all employees similarly situated who join in this action pray for this Court to enter an order certifying a collective action pursuant to section 216(b) for violations of the FLSA, and pray for this Court to grant the following relief:

A. To authorize the issuance of notice at the earliest possible time to all current and former glass workers who were employed by Defendants, and who were paid hourly. This notice should inform them that this action has been filed, describe the nature of the action, and explain their right to opt into this lawsuit if they were not paid overtime wages as required by the FLSA;

B. To declare that Defendants have violated the overtime provisions of the FLSA, 29 U.S.C. § 207, as to Plaintiff and persons similarly situated;

C. To declare that Defendants' violations of the FLSA were willful;

D. To award Plaintiff and other similarly situated current and former employees of Defendants adequate damages for the amount of unpaid overtime wage compensation they are owed, subject to proof at trial;

E. To award Plaintiff and other similarly situated current and former employees of Defendants liquidated damages in an amount equal to the unpaid overtime compensation shown to be owed pursuant to 29 U.S.C. §216(b);

F. If liquidated damages are not awarded, then the Court should award, in the alternative, prejudgment interest;

G. To make the same declarations and awards as prayed for in paragraphs A-F above as to all persons who opt into this action pursuant to 29 U.S.C. §216(b); and

H. To award Plaintiff and other similarly situated current and former employees of Defendants their reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

COUNT II (as to Plaintiff CIREUS only)
Retaliatory Discharge in Violation of 29 U.S.C. § 215 by All Defendants

21. Plaintiff realleges, as if fully set forth in Count II, the allegations of Paragraphs 1 through 20 above.

22. On August 2, 2017, Defendants demanded the Plaintiff to sign a typed statement that pertained to ongoing litigation between a former employee, Michael Lozano, and Defendants. The statement that Plaintiff was requested to sign was blatantly false. Specifically, the statement provided testimony from Plaintiff that contradicted Lozano's contention that he was not afforded a bona fide and uninterrupted meal break.

23. Plaintiff advised the Defendants that he would not sign the statement because it was false. Defendant MARTUCCI, in response to Plaintiff's refusal to sign the statement, assaulted Plaintiff and terminated him.

24. Defendants' actions as more particularly described above were directly related to and in response to Plaintiff's refusal to sign the false statement, since there is no other justifiable reason for Defendants' adverse employment action.

25. Plaintiff's refusal to sign a false statement regarding pending litigation on an issue

that Plaintiff himself is affected by constitutes statutorily protected conduct under Section 15(a)(3) of the FLSA.

26. Defendants' adverse treatment of Plaintiff was a direct result of Plaintiff's public opposition to Defendant's pay practices.

27. The conduct more specifically alleged above violated Plaintiff's rights against retaliation for opposing unlawful employment actions, which retaliation is proscribed by the FLSA.

28. Plaintiff is entitled pursuant to 29 U.S.C. § 216(b), to recover from Defendant:

- a. All lost wages that are due, including pre-judgment interest;
- b. As liquidated damages, an amount equal to lost wages
- c. The costs of this action, and;
- d. A reasonable attorney's fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court will grant judgment against Defendant:

- A. awarding Plaintiff all lost wages found by the court to be due to him, including pre-judgment interest;
- B. awarding Plaintiff payment of liquidated damages in an amount equal to the lost wages due to him;
- C. reinstatement to his previous position at the same rate of pay;
- D. awarding Plaintiff his costs, including a reasonable attorney's fee; and
- E. granting such other and further relief as is just.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: October 20, 2017
Plantation, Florida

Respectfully submitted,

/s/**Robert S. Norell**

Robert S. Norell, Esq. (Fla. Bar No. 996777)

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ROBERT S. NORELL, P.A.

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Plantation, Florida 33317

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Facsimile: (954) 617-6018

Counsel for Plaintiff ILEDIEU CIREUS

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

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

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

Robert S. Norell, P.A., 300 N.W. 70th Avenue, Suite 305, Plantation, FL 33317; (954) 617-6017

DEFENDANTS

Giant Glass & Mirror, Inc. and Joseph M. Martucci

County of Residence of First Listed Defendant Broward (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

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 - Transfer, 8 Multidistrict Litigation - Direct File

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) FLSA, 29 U.S.C. 206 and 215. Brief description of cause: Unpaid overtime and retaliation

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 Federico A. Moreno DOCKET NUMBER 17-61200-FAM

DATE 10/20/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Robert S. Norell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



Iledieu Cireus

Plaintiff(s)

v.

Giant Glass & Mirror, Inc. and Joseph M. Martucci

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Giant Glass & Mirror, Inc.
c/o Joseph M. Martucci, Registered Agent
1994 E. Sunrise Blvd. #111
Fort Lauderdale, Florida 33304

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:

Robert S. Norell, Esq.
ROBERT S. NORELL, P.A.
300 N.W. 70th Avenue
Suite 305
Plantation, FL 33317

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida 

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Plaintiff(s))

v.)

Civil Action No.

Giant Glass & Mirror, Inc. and Joseph M. Martucci)

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Defendant(s))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Joseph M. Martucci
1994 E. Sunrise Blvd. #111
Fort Lauderdale, Florida 33304

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:

Robert S. Norell, Esq.
ROBERT S. NORELL, P.A.
300 N.W. 70th Avenue
Suite 305
Plantation, FL 33317

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against Giant Glass & Mirror Seeks to Expose Illegal Pay Practices](#)
