

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

OMAR S. DEAL, individually, and
on behalf of others similarly situated

CASE NO.

Plaintiffs,

v.

TELESCO CONSTRUCTION COMPANY,
INC., a Florida corporation, and
THOMAS J. TELESCO, JR., individually

Defendants.

**COLLECTIVE ACTION AND COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY TRIAL**

Plaintiff OMAR S. DEAL individually and on behalf of other similarly situated employees, brings this collective action and complaint for damages and demand for a jury trial against Defendants TELESCO CONSTRUCTION COMPANY, INC. (“Defendant Telesco Construction”), and THOMAS J. TELESCO, JR. (“Defendant Thomas”) (collectively, “Defendants”), for back wages owed by Defendants in violation of §7 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, *et seq.* (“the FLSA”), and in support thereof, alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff OMAR S. DEAL (“DEAL” and/or “PLAINTIFF”) was and is a resident of Miami-Dade County, Florida at all times material hereto and he is *sui juris*. He was an hourly non-exempt employee of Defendants, as the term “employee” is defined by 29 U.S.C. § 203(e), who earned, but did not receive, overtime wages calculated at time and one-half times his regular

SOCORRO LAW, P.A.

355 Alhambra Circle, Suite 801, Coral Gables, FL 33134 • Tel: 305-444-6628 • Fax: 305-444-6627

rate of pay of the time spent working over 40 hours per week from Defendants at all times material hereto. Plaintiff consents to participate in this lawsuit (See [DE 1-1]).

2. Defendant Telesco Construction is and was, at all times material hereto, a Florida Corporation that was authorized to and actually conducted its for-profit business in this district, and it is *sui juris*. It maintains its principal place of business in the district of Miami-Dade County, Florida.

3. Defendant Thomas was and is the owner and operator of the corporate Defendant, Defendant Telesco, for the relevant time period. At all times material hereto, Defendant Thomas ran Defendant Telesco's day-to-day operations, had supervisory authority over Plaintiff and was partially or totally responsible for paying Plaintiff's wages and is *sui juris*. He lives in Miami-Dade County, Florida.

4. Defendants were Plaintiff's direct employers, joint employers and co-employers for purposes of the FLSA, as the term "employer" is defined by 29 U.S.C. § 203(d). All Defendants employed Plaintiff.

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this suit is based on claims made under Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq. Jurisdiction is further conferred upon this Court by 28 U.S.C. § 1337.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(ii) because "a substantial part of the events or omissions giving rise to the claim" occurred within the Southern District of Florida, because Defendants transact substantial, and not isolated, business within the Southern District of Florida, because Defendants maintain several offices and their principal place of business and/or live in this District, because Defendants' paid Plaintiffs, and other similarly

situated employees, in this District, and because Plaintiff, and all other similarly situated employees, worked overtime in this District.

BACKGROUND AND STATEMENT OF FACTS

7. Defendants have been at all times material hereto engaged in interstate commerce in the course of their provision of selling, constructing, maintaining and renovating services in South Florida which, traditionally, cannot be performed without using goods, materials, supplies and equipment that have all moved through interstate commerce. Furthermore, Defendants engage in interstate commerce in the course of their submission of billings and receipt of payment involving out-of-state payors. Defendants' annual gross revenues derived from this interstate commerce are believed to be in excess of \$500,000.00 per annum during the relevant periods.

8. In particular, Defendants perform construction services that utilize tools, goods, equipment, machinery, computers, telephones, phone systems, and other materials and supplies to engage in interstate commerce.

9. Defendants regularly employed two or more employees for the relevant time period that handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendants' business an enterprise covered under the Fair Labor Standards Act ("FLSA").

10. Plaintiff worked for Defendant from approximately August 2010 until April 7, 2017. To the extent that records exist regarding the exact dates of Plaintiff's employment exist, such records are in the exclusive custody of Defendants.

11. Plaintiff's work for Defendants, as well as, the work of other similarly situated employees of Defendants, was actually in or so closely related to the movement of commerce

while he and other similarly situated employees worked for Defendants that the FLSA applies to Plaintiff's work for Defendants in the course of his utilizing tools, machinery, buckets, cements, building products, and other building goods and supplies that moved through interstate commerce. Plaintiff would regularly work with tools, gloves, materials, equipment, and supplies that moved in interstate commerce prior to their use of same.

12. Plaintiff sues on behalf of himself and other similarly situated non-exempt employees who were employed or currently are employed by Defendants and who elect to opt in to this action.

13. Defendants have violated the wage and hour provisions of the FLSA by depriving Plaintiff and other similarly situated employees of payment of overtime wages.

14. Throughout his employment, Plaintiff, and other similarly situated employees, regularly worked for Defendants in excess of forty (40) hours per week.

15. From April 2014 through April 2017, Defendants scheduled Plaintiff to work approximately 50 to 605hours per week.

16. During that time period, Defendants paid Plaintiff an hourly rate of \$15.00 to \$17.50 per hour regardless of the hours that he worked.

17. Plaintiff retained the law offices of the undersigned attorneys to represent him in this action and are obligated to pay a reasonable attorneys' fee for all services rendered.

18. All conditions precedent have been satisfied by Plaintiff or waived by Defendants.

COUNT I – VIOLATION OF THE FLSA OVERTIME PROVISIONS

19. Plaintiff realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 18, above as if set forth herein.

20. Defendants willfully and intentionally refused to pay Plaintiff, and other similar situated employees, overtime wages calculated at a rate of time and one-half times his regular rate of pay for all hours worked over 40 hours in a given workweek.

21. Defendants either recklessly failed to investigate whether their failure to pay Plaintiff an overtime wage for the hours he worked during the relevant time period violated the Federal Wage Laws of the United States, they intentionally misled Plaintiff to believe that Defendants were not required to pay him overtime, and/or Defendants concocted a scheme pursuant to which they deprived Plaintiff of the overtime pay he earned.

22. Defendants have not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff and other similarly situated employees.

23. As a result of Defendants violations of the FLSA, Plaintiff, and other similarly situated employees, suffered damages because they were denied overtime wages in accordance with sections 206 and 207 of the FLSA.

24. Plaintiff is entitled to a back pay award of overtime wages for all overtime hours worked, plus an equal amount as a penalty, plus all attorneys' fees and costs.

WHEREFORE, OMAR S. DEAL, demands the entry of a judgment in his favor and against Defendants TELESCO CONSTRUCTION COMPANY, INC. and THOMAS J. TELESCO, after trial by jury and as follows:

- i. That Plaintiff recover compensatory damages and an equal amount of liquidated damages for the past three years as provided under the law and in 29 U.S.C. §216(b), 29 U.S.C. § 201, et seq. and any supporting U.S. Department of Labor Regulations;

- ii. Because Defendants willfully violated the FLSA, a three (3) year statute of limitations applies to such violations pursuant to 29 U.S.C. § 255;
- iii. That Plaintiff recover an award of reasonable attorney's fees, costs, expenses and all other compensation available to them pursuant to 29 U.S.C. § 216(b);
- iv. That Defendants be Ordered to make Plaintiff, and all similar situated employees, whole by providing appropriate overtime pay and other benefits wrongly denied in an amount to be shown at trial; and
- v. Any other relief the Court deems just and proper.

REQUEST FOR TRIAL BY JURY

25. The Plaintiff hereby requests trial by jury on all matters so triable.

Dated this 5th day of May, 2017.

Respectfully submitted,

SOCORRO LAW, PA
Counsel for Plaintiff
355 Alhambra Circle
Suite 801
Coral Gables, Florida 33134
Telephone: (305) 444-6628
Facsimile: (305) 444-6627
Email: jose@socorrolaw.com

By: /s/ José A. Socorro _____
JOSÉ A. SOCORRO
Florida Bar No.: 011675

SOCORRO LAW, P.A.

355 Alhambra Circle, Suite 801, Coral Gables, FL 33134 • Tel: 305-444-6628 • Fax: 305-444-6627

DECLARATION AND NOTICE OF CONSENT TO JOIN

Pursuant to 28 U.S.C. §1746, I, OMAR S. DEAL, hereby make the following declaration:

1. I am over 18 years of age and am capable of making this declaration.

This declaration is made on my own personal knowledge.

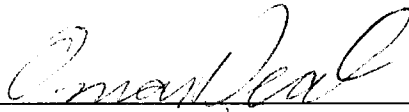
2. Pursuant to 29 U.S.C. §216(b), I consent to serve as a party plaintiff in the above- referenced FLSA opt-in collective action.

3. I was employed by Telesco Construction Company, Inc. and Thomas J. Telesco, Jr. from approximately August 2010 to April 7, 2017.

4. I was not paid at least a minimum wage and/or overtime wages for all of the time that I worked.

5. I agree to be bound by any decision in this case.

Dated this 4 day of May, 2017

 (signature)
Omar Deal (print)

CIVIL COVER SHEET

JS 44 (Rev. 07/16) FLSD Revised 07/01/2016

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 OMAR S. DEAL, individually

DEFENDANTS TELESKO CONSTRUCTION COMPANY, INC., and THOMAS J. TELESKO, JR., Individually

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

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

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

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

Jose A. Socorro, Esq.; Socorro Law, PA; 355 Alhambra Circle, Suite 801, Coral Gables, FL 33134; Tel. (786) 476-8097

(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 | PERSONAL INJURY | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 375 False Claims Act |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | PROPERTY RIGHTS | <input type="checkbox"/> 400 State Reapportionment |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | LABOR | <input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 450 Commerce |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input checked="" type="checkbox"/> 710 Fair Labor Standards Act | SOCIAL SECURITY | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 861 HIA (1395ff) | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 160 Stockholders' Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 480 Consumer Credit |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 751 Family and Medical Leave Act | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 490 Cable/Sat TV |
| <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 850 Securities/Commodities/Exchange |
| <input type="checkbox"/> 196 Franchise | CIVIL RIGHTS | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY | <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS | FEDERAL TAX SUITS | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | Habeas Corpus: | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 463 Alien Detainee | <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 230 Rent Lease & Ejectment | <input type="checkbox"/> 443 Housing/Accommodations | Other: | | <input type="checkbox"/> 896 Arbitration |
| <input type="checkbox"/> 240 Torts to Land | <input type="checkbox"/> 445 Amer. w/Disabilities - Employment | <input type="checkbox"/> 530 General | IMMIGRATION | <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 446 Amer. w/Disabilities - Other | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 462 Naturalization Application | <input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 448 Education | <input type="checkbox"/> 540 Mandamus & Other | <input type="checkbox"/> 465 Other Immigration Actions | |
| | | <input type="checkbox"/> 550 Civil Rights | | |
| | | <input type="checkbox"/> 555 Prison Condition | | |
| | | <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |

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 Transfer
- 7 Appeal to District Judge from Magistrate Judgment
- 8 Multidistrict Litigation - Direct File
- 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO

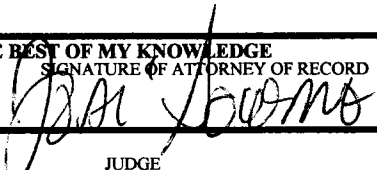
VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 29 USC 216(b) Violation of Fair Labor Standards Act

LENGTH OF TRIAL via 2 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 \$ 100,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

DATE May 5, 2017 SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY RECEIPT # AMOUNT IFF JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

OMAR S. DEAL, individually, and
on behalf of others similarly situated

Plaintiff(s)

v.

TELESCO CONSTRUCTION COMPANY,
INC., a Florida corporation, and
THOMAS J. TELESCO, JR., individually

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Telesco Construction Company, Inc.
by Serving its Registered Agent, Thomas J. Telesco, Jr.
86 NE 109th Street
Miami Shores, FL 33161-7040

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:

Jose A. Socorro, Esq.
SOCORRO LAW, PA
355 Alhambra Circle, Suite 801
Coral Gables, Florida 33134
Telephone: (305) 444-6628

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

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OMAR S. DEAL, individually, and
on behalf of others similarly situated

Plaintiff(s)

v.

TELESCO CONSTRUCTION COMPANY,
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THOMAS J. TELESCO, JR., individually

Defendant(s)

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86 NE 109th Street
Miami Shores, FL 33161-7040

A lawsuit has been filed against you.

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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:

Jose A. Socorro, Esq.
SOCORRO LAW, PA
355 Alhambra Circle, Suite 801
Coral Gables, Florida 33134
Telephone: (305) 444-6628

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FL Construction Company, Owner Facing Unpaid Wage Lawsuit](#)
