

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____-CIV-_____/_____

HARRY DIAZ, on behalf of himself
and others similarly situated,

Plaintiff,

v.

OMEL FLOWERS & DESIGN CORP., a Florida Corporation,
and MARIA ANDRADE, individually,

Defendants.

COMPLAINT

1. Plaintiff, HARRY DIAZ (referred to as “Plaintiff”), is an individual residing in Broward County, Florida.

2. Defendants, OMEL FLOWERS & DESIGN CORP., a Florida Corporation, and MARIA ANDRADE, have at all times material to this Complaint owned and operated a Florida design business with a principal address at 5898 W 16 Avenue, Hialeah, Florida 33012—along with a commercial website at <http://www.omelflowers.com> and Broward County location at 3375B NW 55 Street, Fort Lauderdale, Florida 33309—all through which Defendants have sold flowers and related products for delivery to customers in Florida and throughout the United States.

3. Defendant, MARIA ANDRADE, has at all times material to this Complaint owned, managed, and/or operated OMEL FLOWERS & DESIGN CORP. and Defendant ANDRADE has regularly exercised the authority to hire and fire Plaintiff and Defendants’ other employees, determined the manner in which Plaintiff and Defendants’ other employees are compensated, determined how Plaintiff and Defendants’ other employees’ hours worked are tracked or recorded,

set the rates of pay of Plaintiff and Defendants' other employees, and controlled the finances and operations of OMEL FLOWERS & DESIGN CORP. By virtue of such control and authority, MARIA ANDRADE is an employer of Plaintiff and the other similarly situated employees within the meaning of the Fair Labor Standards Act, 29 U.S.C. §203(d).

4. Plaintiff brings this action on behalf of himself and other current and former employees of OMEL FLOWERS & DESIGN CORP. and MARIA ANDRADE (collectively referred to as "Defendants") for unpaid wages and overtime compensation, liquidated damages, and the costs and reasonable attorneys' fees of this action under the provisions of the Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. §216(b), and Florida law.

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

6. All, or substantial part, of the events giving rise to this action, occurred in Miami-Dade County, within the jurisdiction of the United States District Court for the Southern District of Florida.

7. At all times material to this Complaint, including but not necessarily limited to during the years 2014, 2015, 2016, and 2017, OMEL FLOWERS & DESIGN CORP. has had two (2) or more employees who have regularly sold, handled, or otherwise worked on goods and/or materials that had been moved in or produced for commerce. In this regard, Plaintiff alleges based upon information and belief and subject to discovery, that at all times material to this Complaint, OMEL FLOWERS & DESIGN CORP. has employed two (2) or more employees who, *inter alia*, have regularly: (a) regularly handled and worked on office equipment—including but not limited to computers, photocopier/scanner, printers, telephones—that were goods and/or materials moved in or produced for commerce; (b) regularly handled and worked with commercial office supplies—

including but not limited to paper, pens, and UPS, FedEx, and United States Postal Service shipping materials—that were goods and/or materials moved in or produced for commerce; (c) regularly sold and worked with flowers, balloons, and accessories which were goods and/or materials were manufactured outside the State of Florida and moved in or produced for commerce; and (d) regularly processed bank and/or other electronic transfers and credit card transactions across Florida and other State lines throughout the United States.

8. Based upon information and belief, the annual gross sales volume of OMEL FLOWERS & DESIGN CORP. has been in excess of \$500,000.00 per annum at all times material to this Complaint, including but not necessarily limited to during the years 2014, 2015, 2016, and 2017.

9. At all times material to this Complaint, including but not necessarily limited to during the years 2014, 2015, 2016, and 2017, OMEL FLOWERS & DESIGN CORP. has constituted an enterprise engaged in interstate commerce or in the production of goods for commerce as defined by the FLSA, 29 U.S.C. §203(s).

10. In February 2017, Defendants hired Plaintiff as an hourly floral designer based upon a regular rate of \$15.00 per hour.

11. At all times material to this Complaint between approximately February 2017 and May 2017, Plaintiff was an employee of Defendants within the meaning of the FLSA, 29 U.S.C. §203(e).

12. In one or more work weeks between approximately February 2017 and May 2017, Plaintiff worked at Defendants' location at 5898 W 16 Avenue, Hialeah, Florida 33012 in Miami-Dade County, Florida.

13. Between approximately February 2017 and May 2017, Plaintiff's primary duties

for Defendants as a Floral Designer were non-exempt in nature, consisting of: (1) filling floral vases with water; (2) unwrapping, cutting, and cleaning flowers; (3) moving unused flowers in buckets into refrigerators; (4) arrange flowers in vases according to customer orders; (5) creating floral arrangement bows; and (6) cleaning the floor, work area, and taking out the garbage.

14. Between approximately February 2017 and May 2017, Plaintiff worked in excess of Forty (40) hours per week for Defendants in multiple work weeks but Defendants failed to pay Plaintiff time and one-half of his applicable regular rate of pay for all of Plaintiff's actual overtime hours worked.

15. More specifically, between approximately February 2017 and May 2017, Plaintiff regularly worked Six (6) and Seven (7) days per week for Defendants with approximate start time of 8:00 a.m. and stop time of 5:00 p.m. in February 2017 and approximate start times between 7:30 a.m. and 8:00 a.m. and stop times between 9:30 p.m. and 10:00 p.m. in May 2017 but Defendants failed to pay Plaintiff at the rate of \$22.50 per hour for all of the overtime hours he worked for Defendants.

16. Based upon Defendants owing Plaintiff a total of approximately Seventy-Three (73) unpaid overtime hours at the rate of \$22.50/hour, and subject to discovery, Plaintiff's unpaid overtime wages total approximately \$1,642.50 [$\$22.50/\text{hour} \times 73 \text{ unpaid overtime hours} = \$1,642.50$].

17. Likewise, Defendants also failed to pay Plaintiff for a total of approximately Fifty-Seven and One Half (57.50) regular hours he worked for Defendants during two (2) work weeks in May 2017, despite the fact that Plaintiff was entitled to be paid his regular hourly rate of \$15.00/hour for each regular hour Plaintiff worked for Defendants, for which Plaintiff is owed \$862.50 in regular wages which Defendants have failed and refused to pay to Plaintiff [57.50 hours

x \$15.00/hour = \$862.50].

18. The additional persons who may become Plaintiffs in this action are Defendants' current and former non-exempt Floral Designers and other similarly situated employees, however variously titled, who have worked for Defendants in one or more weeks between October 2014 and the present without being paid time and one-half wages for all of their actual hours worked in excess of Forty (40) hours per week.

19. Defendants have not complied with the requirements of the Fair Labor Standards Act by, *inter alia*: (a) failing to maintain accurate time records of the actual start times, stop times, number of hours worked each day, and total hours worked each week by Plaintiff and other similarly situated non-exempt employees between October 2014 and the present, as required by the FLSA, 29 C.F.R. §516.2; and (b) failing to pay time and one-half wages for all of the actual overtime hours worked by Plaintiff and other similarly situated non-exempt employees in one or more weeks between October 2014 and the present.

20. At all times material to this Complaint, Defendants had knowledge of the actual hours worked by Plaintiff and other similarly situated non-exempt employees in multiple work weeks between October 2014 and the present, all of which work was for the benefit of Defendants. Nonetheless, Defendants knowingly and willfully failed to compensate Plaintiff and the other similarly situated employees with time and one-half wages for all of their actual overtime hours worked, instead accepting the benefits of the work performed by Plaintiff and the others similarly situated to him without paying the compensation required by the FLSA.

21. Based upon information and belief, records of some of the hours worked by Plaintiff and the other similarly situated employees between October 2014 and the present are in the possession, custody, and/or control of Defendants.

22. Based upon information and belief, the complete records reflecting the wages and compensation actually paid by Defendants to Plaintiff and the other similarly situated employees between October 2014 and the present are in the possession, custody, and/or control of Defendants.

COUNT I
OVERTIME VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

23. Plaintiff readopts and realleges the allegations contained in Paragraphs 1 through 22 above.

24. Plaintiff is entitled to be paid time and one-half of his applicable regular rate of pay for each and every hour he worked for Defendants in excess of Forty (40) hours per work week between approximately February 2017 and May 2017.

25. All similarly situated current and former non-exempt Floral Designers and other similarly situated employees, however variously titled, who have worked in one or more weeks between October 2014 and the present for Defendants at any locations are also entitled to be paid time and one-half of their applicable regular rates of pay for each and every overtime hour they worked for Defendants but were not properly compensated for working on Defendants' behalf during any work weeks within the three (3) year statute of limitations period between October 2014 and the present.

26. At all times material to this Complaint, Defendants had actual notice and knowledge that its compensation practices did not provide Plaintiff and the other similarly situated non-exempt Floral Designers, however variously titled, with time and one-half wages for all of their actual overtime hours worked between October 2014 and the present based upon, *inter alia*: (a) failing to maintain accurate time records of the actual start times, stop times, number of hours worked each day, and total hours worked each week by Plaintiff and other similarly situated non-exempt employees between October 2014 and the present, as required by the FLSA, 29 C.F.R.

§516.2; and (b) failing to pay time and one-half wages for all of the actual overtime hours worked by Plaintiff and other similarly situated non-exempt employees in one or more weeks between October 2014 and the present.

27. By reason of the intentional, willful and unlawful acts of Defendants, Plaintiff and other similarly situated non-exempt employees, however variously titled, have suffered damages plus incurring costs and reasonable attorneys' fees.

28. Defendants did not have a good faith basis for their failure to pay time and one-half wages for all of the actual overtime hours worked by Plaintiff and Defendants' other non-exempt employees, however variously titled—and Defendants were previously the subject of a civil action for alleged violations of the Fair Labor Standards Act by at least two (2) other former employees in 2012—as a result of which Plaintiff and the other similarly situated employees are entitled to the recovery of liquidated damages from Defendants pursuant to 29 U.S.C. §216(b).

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

30. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff, HARRY DIAZ, and any current or former employees similarly situated to him who join this action as Opt-In Plaintiffs, demand judgment, jointly and severally, against Defendants, OMEL FLOWERS & DESIGN CORP. and MARIA ANDRADE, for the payment of all unpaid overtime compensation, liquidated damages, reasonable attorneys' fees and costs of suit, and for all proper relief including prejudgment interest.

COUNT II
RECOVERY OF UNPAID WAGES UNDER FLORIDA LAW

Plaintiff, HARRY DIAZ readopts and realleges the allegations contained in Paragraphs 1

through 22 above.

31. Between approximately February 2017 and May 2017, Plaintiff performed work for Defendants for which he was not compensated at all, despite Defendants accepting the benefits of Plaintiff's work.

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

33. Under the terms of Plaintiff's employment with Defendants, Plaintiff was entitled to be paid \$15.00/hour for each hour Plaintiff worked for Defendants between approximately February 2017 and May 2017. However, based upon Plaintiff being owed Fifty-Seven and One Quarter (57.25) unpaid hours at the rate of \$15.00/hour from Defendants, Plaintiff's earned wages due and owing from Defendants under Florida law total \$858.75 [57.25 Unpaid hours/week x \$15.00/hour = \$858.75].

34. Plaintiff has requested Defendants pay him for all of his actual hours worked between approximately February 2017 and May 2017 in the amount of \$858.75 but Defendants have failed to make payment to Plaintiff of his earned wages.

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

36. Plaintiff demands a jury trial.

WHEREFORE, Plaintiff, HARRY DIAZ, demands judgment against Defendants, jointly and severally, OMEL FLOWERS & DESIGN CORP. and MARIA ANDRADE, for the payment of all unpaid wages and related damages, reasonable attorneys' fees and costs, and for all proper relief including prejudgment interest.

JURY TRIAL DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: October 4, 2017

Respectfully submitted,

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

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendants, **Omel Flowers & Design Corp. and Maria Andrade**, as well as any related entities and individuals, to seek recovery for violations of the Fair Labor Standards Act (FLSA) pursuant to 29 U.S.C. §216(b) *et seq.*

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

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

Harry R. Diaz
Print Name

Signature: Harry R. Diaz
Harry R. Diaz (Jun 7, 2017)

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 HARRY DIAZ

DEFENDANTS OMEL FLOWERS & DESIGN CORP. and MARIA ANDRADE

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Office of Keith M. Stern, P.A., 14 NE 1st Avenue, Suite 800, Miami, Florida 33132, (305) 901-1379

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

(d) Check County Where Action Arose: [X] 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)

- Citizen of This State PTF DEF 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State PTF DEF 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

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

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 [X] NO b) Related Cases [] YES [X] 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 U.S.C. 207 - Action for Unpaid Overtime Wages

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 \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

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

DATE: October 4, 2017 SIGNATURE OF ATTORNEY OF RECORD: s/Keith M. Stern

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

HARRY DIAZ, on behalf of himself
and others similarly situated,

Plaintiff(s)

v.

OMEL FLOWERS & DESIGN CORP., a Florida
Corporation, and MARIA ANDRADE, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) OMEL FLOWERS & DESIGN CORP.,
c/o Maria Andrade, Registered Agent
5898 W 16th Ave
Hialeah, FL 33012

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

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

HARRY DIAZ, on behalf of himself
and others similarly situated,

Plaintiff(s)

v.

OMEL FLOWERS & DESIGN CORP., a Florida
Corporation, and MARIA ANDRADE, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MARIA ANDRADE
5898 W 16th Ave
Hialeah, FL 33012

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Omel Flowers & Design Corp. Clipped with Wage and Hour Lawsuit](#)
