

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

LUIS D. ESTEVEZ
and other similarly-situated individuals,

Plaintiff,

v.

YNIGO LANDSCAPING AND
LAWN SERVICES, INC.,
and PEDRO YNIGO, individually.

Defendants.

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(b))

COMES NOW the Plaintiff LUIS D. ESTEVEZ, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants YNIGO LANDSCAPING AND LAWN SERVICES, INC., and PEDRO YNIGO, individually and alleges:

1. This is an action to recover money damages for unpaid overtime wages under the laws of the United States. This Court has jurisdiction pursuant to Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 201-219, § 216(b), the Fair Labor Standards Act, “the Act”, (Section 216 for jurisdictional placement), and supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §§1332 and 1367.
2. Plaintiff LUIS D. ESTEVEZ is a resident of Dade-County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.

3. Defendant YNIGO LANDSCAPING AND LAWN SERVICES, INC. (hereinafter YNIGO LANDSCAPING) is a Florida corporation which have place of business within the jurisdiction of this Court. At all times material hereto, Defendant was and is engaged in interstate commerce.
4. The individual Defendant PEDRO YNIGO was the owner/president and manager of Defendant Corporation YNIGO LANDSCAPING AND LAWN SERVICES, INC.
5. All the actions raised in this complaint took place in Dade-County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. This cause of action is brought by Plaintiff as a collective action to recover from Defendants overtime compensation, liquidated damages, and the costs and reasonably attorney's fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT") on behalf of Plaintiff, and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after January 2015, (the "material time") without being compensated minimum and overtime wages pursuant to the FLSA.
7. Corporate Defendant YNIGO LANDSCAPING provides landscaping and lawn maintenance services.
8. Defendant YNIGO LANDSCAPING employed Plaintiff LUIS D. ESTEVEZ as an hourly employee, from approximately January 15, 2015 to approximately November 15, 2016, or 96 weeks.

9. At all times hereto, Plaintiff was employed by Defendant as a driver and landscaping worker, performing general non-exempt work. Plaintiff was paid a daily rate of \$95.00 daily.
10. During his employment period with Defendant, Plaintiff worked 6 days per week, from Monday to Saturday, from 5:45 AM to 6:00 PM (12.15 hours daily), or an average of seventy (70) hours per week. Plaintiff has already deducted 3 hours of lunch time.
11. Plaintiff did not clock in and out because Defendant did not use any time-keeping method. Plaintiff and other similarly situated employees were paid with checks. The checks were not accompanied by any paystubs or records providing information regarding any accounting of working hours, classification of the employee's labor, or withholdings of employment taxes.
12. Plaintiff worked more than 40 hours every week. Plaintiff was paid for all his hours, but he was not paid for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of FLSA provisions.
13. During his last three months of employment, Plaintiff complained many times about the missing payment for overtime hours. Plaintiff complained to the owner of the business PEDRO YNIGO.
14. On or about November 2016, Plaintiff complained about his overtime hours to the owner of the business PEDRO YNIGO, for the last time. In retaliation to Plaintiff's complaints, Defendants fired Plaintiff.
15. Plaintiff LUIS D. ESTEVEZ intends to recover half-time overtime hours, liquidated damages, retaliatory damages, and any other relief as allowable by law.

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

COUNT I:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME, AGAINST ALL DEFENDANTS

17. Plaintiff LUIS D. ESTEVEZ re-adopts each and every factual allegation as stated in paragraphs 1-16 above as if set out in full herein.

18. This cause of action is brought by Plaintiff LUIS D. ESTEVEZ as a collective action to recover from Defendants overtime compensation, liquidated damages, costs and reasonably attorney's fees under the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT"), on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after January 2015, (the "material time") without being compensated "at a rate not less than one and a half times the regular rate at which he is employed."

19. Defendant YNIGO LANDSCAPING was engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a landscaping company that has more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently ordered equipment and supplies produced or originated out of state and by using the instrumentalities of interstate commerce. Upon information and belief, the annual gross revenue of the

Employers/Defendants was at all times material hereto in excess of \$500,000 per annum.

By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.

20. Plaintiff and those similarly-situated, were employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff and those similarly-situated regularly handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

21. Defendant YNIGO LANDSCAPING employed Plaintiff LUIS D. ESTEVEZ as an hourly employee, from approximately January 15, 2015 to approximately November 15, 2016, or 96 weeks.

22. At all times hereto, Plaintiff was employed by Defendant as a driver and landscaping worker, performing general non-exempt work. Plaintiff was paid a daily rate of \$95.00 daily.

23. During his employment period with Defendant, Plaintiff, and those similarly situated, worked 6 days per week, from Monday to Saturday, from 5:45 AM to 6:00 PM (12.15 hours daily), or an average of seventy (70) hours per week. Plaintiff has already deducted 3 hours of lunch time.

24. Plaintiff was paid for all his hours, but at his regular rate. Plaintiff and those similarly-situated were not paid for all overtime hours worked at the rate to time and a half his regular rate, in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).

25. Plaintiff did not clock in and out. Defendant did not keep any time-keeping method. Plaintiff and other similarly situated employees were paid with checks. The checks were

not accompanied by any paystubs or records providing information regarding any accounting of hours worked or classification of the employee's labor withholdings of employment taxes.

26. The records, if any, concerning the number of hours actually worked by Plaintiff and those similarly situated, and the compensation actually paid to such employees should be in the possession and custody of Defendants. However, upon information and belief, Defendants did not maintain accurate and complete time records of hours worked by Plaintiff and other employees.

27. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.

28. 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 half-time overtime wages is as follows:

* Please note that these amounts are based on a preliminary calculation and that these figures are subjected to modifications as discovery could dictate. After discovery, Plaintiff will properly adjust his calculations.

a. Total amount of alleged half-time unpaid O/T wages:

Eleven Thousand Seven Hundred Twenty-One Dollars and 60/100 (\$11,721.60)

b. Calculation of such wages:

Total weeks of employment: 96 weeks

Relevant weeks of employment: 96 weeks

Total hours worked: 70 hours weekly

Total O/T hours: 30 hours

Payment rate: \$95.00 daily x 6 days = \$570.00: 70 hrs.= \$8.14 hourly rate

Regular rate: $\$8.14:2 = \4.07 half-time

Half-time $\$4.07 \times 30 \text{ hours} = \122.10 weekly x 96 weeks = \$11,721.60

c. Nature of wages (e.g. overtime or straight time):

This amount represents unpaid half-time overtime wages.

29. At all times material hereto, the Employer/Defendant failed to comply with Title 29 U.S.C. §207 (a) (1), 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 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 said Act.
30. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employee's employment with Defendants as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.
31. At the times mentioned, individual Defendant PEDRO YNIGO was the owner/president and manager of YNIGO LANDSCAPING. Individual Defendant PEDRO YNIGO was the employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that this individual Defendant acted directly in the interests of the Corporation, in relation to its employees, including Plaintiff and others similarly situated. Defendant PEDRO YNIGO had operational control of the business, provided Plaintiff and other similarly situated employees with their work schedule, and he is jointly liable for Plaintiff's damages.
32. Corporate Defendant YNIGO LANDSCAPING, and individual Defendant PEDRO YNIGO willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States, and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendants as set forth above.

33. 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 respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff LUIS D. ESTEVEZ and other similarly-situated individuals and against the Defendants YNIGO LANDSCAPING and PEDRO YNIGO on the basis of Defendants willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff LUIS D. ESTEVEZ actual damages in the amount shown to be due for unpaid wages and overtime compensation for hours worked in excess of forty weekly, with interest; 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 and/or available pursuant to Federal Law.

JURY DEMAND

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

COUNT II:
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)
RETALIATORY DISCHARGE

34. Plaintiff LUIS D. ESTEVEZ re-adopts each and every factual allegation as stated in paragraphs 1-16 of this complaint as if set out in full herein.
35. Defendant YNIGO LANDSCAPING was engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a landscaping company that has more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently ordered equipment and supplies produced or originated out of state and by using the instrumentalities of interstate commerce. Upon information and belief, the annual gross revenue of the Employers/Defendants was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.
36. Plaintiff and those similarly-situated, were employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff and those similarly-situated regularly handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.
37. 29 U.S.C. § 207 (a) (1) states, "if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty at the rate of at least one and one-half time the employee's regular rate..."
38. Defendant's business activities involve those to which the Fair Labor Standards Act applies.
39. 29 U.S.C. 215(a)(3) states... it shall be unlawful for any person— "to discharge or in any other 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 any such proceeding,.....”

40. Defendant YNIGO LANDSCAPING employed Plaintiff LUIS D. ESTEVEZ as an hourly employee, from approximately January 15, 2015 to approximately November 15, 2016, or 96 weeks.

41. At all times hereto, Plaintiff was employed by Defendant as a driver and landscaping worker, performing general non-exempt work.

42. During his employment period with Defendant, Plaintiff worked 6 days per week, from Monday to Saturday, from 5:45 AM to 6:00 PM (12.15 hours daily), or an average of seventy (70) hours per week. Plaintiff has already deducted 3 hours of lunch time.

43. Plaintiff was paid a daily rate of \$95.00 daily, or \$570.00 weekly, resulting in an hourly rate of \$8.14. Plaintiff overtime rate should be \$12.21.

44. Plaintiff was paid for all his hours, but at the regular rate of \$8.14. Plaintiff was not paid for overtime hours at the rate of one and a half his regular rate in violation of 29 U.S.C. § 207 (a) (1).

45. During his last three months of employment, Plaintiff complained many times about the missing payment for overtime hours. Plaintiff complained to the owner of the business PEDRO YNIGO.

46. These complaints constituted protected activity under the Fair Labor Standards Act.

47. On or about November 2016, Plaintiff complained the last time about his overtime hours, to the owner of the business PEDRO YNIGO. In retaliation to Plaintiff's complaints, Defendants fired Plaintiff.

48. At all time during his employment with Defendant, Plaintiff performed his duties satisfactorily. There was no reason other than a retaliatory action to terminate Plaintiff's employment with Defendant.

49. There was closed proximity between Plaintiff's last protected activity, and his termination.

50. At the times mentioned individual Defendant PEDRO YNIGO was the owner/president and manager of YNIGO LANDSCAPING. Individual Defendant PEDRO YNIGO was the employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that this individual Defendant acted directly in the interests of the Corporation, in relation to its employees, including Plaintiff and others similarly situated. Defendant PEDRO YNIGO had operational control of the business, provided Plaintiff and other similarly situated employees with their work schedule, and he is jointly liable for Plaintiff's damages.

51. The motivating factor which caused Plaintiff's discharge as described above was the complaint seeking overtime wages from the Defendants. In other words, Plaintiff would not have been discharged, but for his complaints for overtime wages.

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

53. 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 LUIS D. ESTEVEZ respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;

- B. Enter judgment against Defendants YNIGO LANDSCAPING and PEDRO YNIGO that Plaintiff LUIS D. ESTEVEZ recovers compensatory, damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
- C. That Plaintiff recovers an award of reasonable attorney fees, costs, and expenses.
- D. Order the Defendants YNIGO LANDSCAPING and PEDRO YNIGO to make whole the Plaintiff by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;
- E. Plaintiff LUIS D. ESTEVEZ further prays for such additional relief as the interests of justice may require.

JURY DEMAND

Plaintiff LUIS D. ESTEVEZ demands trial by jury of all issues triable as of right by jury.

DATED: July 31, 2017

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 446-1500
Facsimile: (305) 446-1502
zep@thepalmlawgroup.com
Attorney for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

LUIS D. ESTEVEZ

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

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

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500, Miami, FL 33156
Tel: (305) 446-1500

DEFENDANTS

YNIGO LANDSCAPING AND LAWN SERVICES, INC. and PEDRO YNIGO

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

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

Attorneys (If Known)

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

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country, with sub-columns for Incorporated or Principal Place of Business.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

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

- [X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Re-filed- (see VI below)
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation
[] 7 Appeal to District Judge from Magistrate Judgment

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

a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO
(See instructions second page): JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
29 U.S.C.
LENGTH OF TRIAL via 3 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

[X] 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

SIGNATURE OF ATTORNEY OF RECORD /s/ Zandro E. Palma, Esq.

DATE July 31, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LUIS D. ESTEVEZ

Plaintiff

v.

YNIGO LANDSCAPING AND LAWN SERVICES, INC. and PEDRO YNIGO

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PEDRO YNIGO

20205 SW 188TH ST
PERRINE, FL 33187

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LUIS D. ESTEVEZ

Plaintiff

v.

YNIGO LANDSCAPING AND LAWN SERVICES, INC. and PEDRO YNIGO

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) YNIGO LANDSCAPING AND LAWN SERVICES, INC. through its Registered Agent:

YNIGO, PEDRO
20205 SW 188TH ST
PERRINE, FL 33187

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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: [Ynigo Landscaping and Lawn Services Faces Unpaid Overtime, Retaliation Suit](#)
