

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 18-24026-CIV-X/x

Adolfo Guerra, individually, and on behalf of
others similarly situated,

CLASS REPRESENTATION

Plaintiff,

vs.

Blue Line Transport, Inc., a for profit Florida
corporation,

Defendant.

_____ /

FAIR LABOR STANDARDS ACT COMPLAINT

Plaintiff Adolfo Guerra, individually, and on behalf of others similarly situated, sues
Defendant, Blue Line Transport, Inc., and alleges:

JURISDICTIONAL ALLEGATIONS

1. This lawsuit is an action to recover money damages for unpaid minimum wages, unpaid overtime wages brought under the laws of the United States of America. and under Florida common law and statutes, including §448, Florida Statutes. This Court enjoys jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C., §§201-219 (“FLSA”), 28 U.S.C. §1367, §448, Florida Statutes, and § 24, Art. X of the Florida Constitution.

2. Plaintiff Adolfo Guerra worked as a dispatcher for a trucking company known as Blue Line Transport, Inc. Mr. Guerra, together with any other person who may hereafter consent to join in this lawsuit, is and are “employees” within the meaning of 29 U.S.C. §203(e). He was employed from approximately November 2016 through early September 2018.

3. Defendant Blue Line Transport, Inc., is a Florida corporation and a “person” and “employer” within the meaning of the 29 U.S.C. §203 (a) and (d) and may hereinafter be referred to as the “Employer” or “BLUE LINE”. Moreover, the “Employer” is individually – and together with others through which it operates – is an enterprise engaged in commerce within the meaning of 29 U.S.C. §203(s).

5. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1337, 1367 and by 29 U.S.C. §216(b). The Employer is, and at all times material to this action was, an organization which sells and/or markets and/or transports services and/or goods to customers in Florida and across state lines. Upon information and belief, the annual gross revenue of the Employer was at all times material to this action in excess of \$500,000.00 per annum.

6. By reason of the foregoing, the Employer is, and at all times material to this action was, an enterprise engaged in commerce or in the production of goods for commerce as defined in Sections 3(r) and 3(s) of the FLSA, 29 U.S.C., §§ 203(r) and 203(s). Moreover, the named Plaintiff, and others similarly situated, were individually engaged in commerce within the meaning of the FLSA by virtue of the nature of the work they performed.

CLASS ALLEGATIONS UNDER THE FLSA

7. The Plaintiff is similarly situated to other persons employed as a “dispatcher” by the Employer during any part of the preceding three-year period commencing upon the filing of this lawsuit.

8. The named Plaintiff, and those similarly situated, work or worked for a flat rate weekly salary without regard to the number of hours worked. In fact, the Employer does not keep time-keeping records for hours worked by the Plaintiff, others similarly situated, or any of its employees.

9. The Employer required that Plaintiff and certain other employees “incorporate” so that Employer might pay them as though they were not employees at all, even when said employees were required to work a schedule, and well in excess of 40 hours per workweek.

10. In addition to the flat, weekly salary, the Plaintiff was supposed to be paid a commission equal to 3% of the gross profit generated by every load delivery placed by him as dispatcher.

11. Plaintiff was required to work at least a 40 hour per week schedule and, in addition, was required to remain on call and answer the Employer’s phone remotely 24 hours per day, on average, seven out of every fourteen days, in addition to the more than 40 hours worked at the Employer’s workplace. This was accomplished by a “*72 and *73 function” on the Employer’s phone system by which all of the calls received by the Employer would be forwarded to the personal cell phone of the Plaintiff and others similarly situated.

12. Plaintiff was not always paid his salary or commissions when due or on the regularly scheduled payday.

ATTORNEY’S FEES

13. Plaintiff has engaged the services of the undersigned attorneys and have agreed to pay reasonable attorney’s fees for their services.

ENTITLEMENT TO ATTORNEY’S FEES

14. Plaintiff and others similarly situated are entitled to an award of prevailing party attorney’s fees and costs pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 and other related authority. Additionally, Plaintiffs are entitled to fees and costs pursuant to Florida Statute §448.08, and other related authority.

- COUNT I -
VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Failure to Pay Minimum Wages)

Plaintiff, and others similarly situated, reallege ¶¶ 1-14, as though fully set forth herein.

15. At all times during their employment, the Plaintiff and others similarly situated were employees required to be finally and unconditionally paid a minimum hourly wage for every hour worked during the applicable, established pay period. Further, they were entitled to receive such compensation on the established regular pay date.

16. Since on or about September, 2015 through the present (“the applicable period covered by this Complaint”), the Employer violated the provisions of the FLSA, 29 U.S.C. §206 and §215(a)(2) by failing to pay the Plaintiff, and other similarly situated employees, a minimum hourly wage during numerous applicable pay periods by, among other factors: (a) failing to finally and unconditionally pay at least the applicable minimum hourly wage for every hour worked during numerous covered pay periods as required by law; (b) failing to pay the required wages on the date due.

17. At all times material to this action, the Employer failed to comply with 29 U.S.C. Sections 201-219 and 29 C.F.R., Sections 516.1, *et. seq.* in that Plaintiff, and those similarly situated, performed services for the benefit of the Defendant for which they were paid below the minimum wage rates required under both federal law, and under applicable Florida law and Constitution, which occasionally higher minimum wage rates are made applicable under the FLSA. Other persons who may become plaintiffs in this action also provided labor as hourly-rate employees and/or former employees of the Employer and have also been systematically paid less than the applicable minimum hourly wage, for the reasons set forth above.

18. The Employer knew or showed a reckless disregard for the provisions of the FLSA concerning the timely, complete, and unconditional payment of minimum wages and remains owing the named Plaintiff and other similarly situated employees all unpaid minimum hourly wages for every hour worked during the three year period preceding this lawsuit.

WHEREFORE, Plaintiff, and others similarly situated demand the following: payment of minimum wages for every hour worked during every pay period, or as much as is allowed by the Fair Labor Standards Act, whichever is greater, in an amount to be proven at the time of trial; an additional like amount as liquidated damages; an award of reasonable attorney's fees and costs, and; any and all such other relief which this Court may deem reasonable under the circumstances. Also, in the event that Plaintiffs do not recover liquidated damages as allowed, then Plaintiff and those similarly situated demand an award of prejudgment interest as a lesser alternative to liquidated damages.

-COUNT II-
VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Failure to Pay Overtime Wages)

Plaintiff, and others similarly situated, reallege ¶¶ 1-14, as though fully set forth herein.

19. At all times during his employment, Plaintiff, and those similarly situated, was a protected employee required by law to be paid by the hour for work performed for the Employer and required to be paid at the rate of one-and-half times his regular hourly rate for those hours he worked in excess of forty during any given workweek.

20. Plaintiff routinely worked many overtime hours per week but his overtime hours worked were routinely and systematically not paid.

21. Other current and former similarly situated employees of the Employer, who performed the same or similar duties for the Employer as Plaintiff, were also not paid overtime wages as required by law.

22. At all times material to this action, the Employer failed to comply with 29 U.S.C. Sections 201-219; 29 C.F.R., Part 516 – Records to be Kept, and; 29 C.F.R. Part 778 – Overtime Compensation, as well as other applicable authority in that Plaintiffs and those similarly situated performed services and worked in excess of the maximum hours provided by the FLSA, but no adequate provision was made by the Employer to properly pay them at the rate of time-and-a-half for all hours worked in excess of forty (40) hours per workweek as provided in the FLSA. Other persons who are -- or who may become -- Plaintiffs in this action, also provided labor as hourly-rate employees and/or former employees of the Employer. Said other persons were also subject to the payroll practices and procedures described above.

23. The Employer failed to pay overtime compensation to Plaintiff, and those similarly situated, based upon factors to include the following: (a) Plaintiff was not paid for most of the many hours he worked in excess of forty during the vast majority of his workweeks; (b) the Employer completely failed to maintain the types of books and records and policies necessary and required to establish the commencement of the workweek for overtime wage calculation purposes; (c) the Employer has failed to timely disburse overtime compensation during the applicable pay period when the excess hours were worked, or ever.

24. The Employer knew and/or showed a reckless disregard for the provisions of the FLSA concerning the payment of overtime wages and remains owing Plaintiff and other similarly situated employees their overtime wages due from the commencement of their employment and, as a result, they are entitled to recover double or liquidated damages.

WHEREFORE, Plaintiff and others similarly situated request double damages and reasonable attorney's fees and costs from Defendants, pursuant to the Fair Labor Standards Act as cited above to be proven at the time of trial, and for all unpaid overtime wages owing Plaintiff and those similarly situated employees for their entire applicable employment period, or as much as is allowed by the FLSA, whichever is greater. In the event that Plaintiff and those similarly situated employees do not recover double damages, then Plaintiff and those similarly situated seek an award of prejudgment interest for the unpaid overtime compensation and any and all other relief which this Court may deem reasonable under the circumstances.

- COUNT III -
BREACH OF AGREEMENT TO PAY WAGES
(Failure to Pay Agreed Wages)

Plaintiff realleges ¶¶ 1 through 14 as though fully set forth herein.

25. At all times during his employment, the Plaintiff, and those similarly situated, were employees whom the Employer had agreed to pay at wages representing the greater of a minimum hourly wage for every hour worked during corresponding pay periods, or commissions earned during each pay period.

26. Additionally, the Employer promised to pay and agreed to pay a 3% commission based upon gross profit of deliveries generated by Plaintiff.

27. The Employer breached the agreement by failing to pay the negotiated commission component of the Plaintiff's compensation.

28. At the time his employment with the Employer ended, the Employer owed Plaintiff wages and commissions which have not been paid.

WHEREFORE, Plaintiff, and those similarly situated, demand the following: payment of all accrued unpaid wages and commissions and payments promised under the pay plan, in an

amount to be proven at the time of trial; accrued interest on those sums at the applicable judgment rate of interest, and; an award of reasonable attorney's fees and costs.

JURY DEMAND

29. Plaintiff demands trial by jury of all issues, claims and defenses in this action that are triable as of right by a jury.

Dated: October 1, 2018

ANTHONY F. SANCHEZ, P.A.
COUNSEL FOR PLAINTIFF
6701 SUNSET DRIVE, SUITE 101
MIAMI, FL 33143
TEL.: 305-665-9211
FAX: 305-328-4842
E-MAIL: AFS@LABORLAWFLA.COM

By: /s/Anthony F. Sanchez
ANTHONY F. SANCHEZ
FLORIDA BAR NO. 0789925

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.)

I. (a) PLAINTIFFS

ADOLFO GUERRA, individually, and on behalf of others similarly situated,

DEFENDANTS

BLUE LINE TRANSPORT, INC., a for profit Florida corporation

(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)

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

(c) Attorney's (Firm Name, Address, and Telephone Number) Anthony F. Sanchez 6701 Sunset Drive, Suite 101 Miami, FL 33143 305-665-9211

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country) and business location (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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, 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 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

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., Sections 201-219

Brief description of cause:

FLSA Minimum & OT Wages, Breach of Agreement to Pay Wages

VII. 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: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/01/2018

/s/ Anthony F. Sanchez

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

ADOLFO GUERRA, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

BLUE LINE TRANSPORT, INC., a for profit Florida corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

BLUE LINE TRANSPORT, INC. c/o Registered Agent Jesus R. Acuna 7227 NW 29th Avenue Miami, FL 33147

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:

Anthony F. Sanchez Anthony F. Sanchez, P.A. 6701 Sunset Drive, Suite 101 Miami, Florida 33143 Tel.: 305-665-9211 Fax: 305-328-4842

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: [Blue Line Transport Hit with Ex-Dispatcher's Lawsuit Over Allegedly Unpaid Wages](#)
