

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

SANTOS ROSENDO LINARTE LEZAMA	)
and all others similarly situated under 29	)
U.S.C. 216(b),	)
	)
Plaintiff,	)
vs.	)
	)
ROOF DEPOT USA, LLC,	)
DAVID GARCIA,	)
	)
Defendants.	)
_____	)

**COMPLAINT UNDER 29 U.S.C. 201- 216 OVERTIME VIOLATIONS**

Plaintiff, SANTOS ROSENDO LINARTE LEZAMA on behalf of himself and all others similarly situated under 29 U.S.C. 216(b), through undersigned counsel, file this Complaint against Defendants, ROOF DEPOT USA, LLC, and DAVID GARCIA and allege:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. §§ 201-216.
2. The Plaintiff was a resident of South Florida at the time that this dispute arose.
3. The Defendant ROOF DEPOT USA, LLC, is a Limited Liability Company that regularly transacts business within the Southern District of Florida, including Miami-Dade County. Upon information and belief, the Defendant Company was Plaintiff’s FLSA employer for the respective period of employment (“the relevant time period”).
4. The individual Defendant DAVID GARCIA is a corporate officer and/or owner and/or manager of the Defendant Corporation who ran the day-to-day operations of the Corporate Defendant for the relevant time period and was responsible for paying Plaintiff’s wages for the relevant time period and controlled Plaintiff’s work and schedule and was therefore Plaintiff’s

employer as defined by 29 U.S.C. 203 (d).

5. All acts or omissions giving rise to this dispute took place in Miami-Dade County.

### **COUNT I. FEDERAL OVERTIME WAGE VIOLATION**

6. This action arises under the laws of the United States. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendants have employed several other similarly situated employees, like Plaintiff, who have not been paid overtime and/or minimum wages for work performed in excess of 40 hours weekly from the filing of this complaint back three years.

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).

8. 29 U.S.C. § 207 (a) (1) states, "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

9. Plaintiff worked for Defendants as a regular worker at the shop from on or about November 1, 2017 through on or about November 12, 2018.

10. Defendant's business activities involve those to which the Fair Labor Standards Act applies. Both the Defendant's business and the Plaintiff's work for the Defendants affected interstate commerce for the relevant time period. Plaintiff's work for the Defendants affected

interstate commerce for the relevant time period because the materials and goods that Plaintiff used on a constant and/or continual basis and/or that were supplied to him by the Defendants to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiff's work for the Defendants was actually in and/or so closely related to the movement of commerce while he worked for the Defendants that the Fair Labor Standards Act applies to Plaintiffs' work for the Defendants.

11. Additionally, Defendants regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendant's business an enterprise covered under the Fair Labor Standards Act.

12. Upon information and belief, the Defendant Corporation had gross sales or business done in excess of \$500,000 annually for the years 2016 and 2017.

13. Upon information and belief, the Defendant Corporation's gross sales or business done is believed to have exceeded \$375,000 for the first nine months of the year 2018 and is expected to exceed \$500,000 for the year 2018.

14. Between the period of on or about November 1, 2017 through on or about November 12, 2018, Plaintiff worked an average of 73 hours each week for Defendants and was paid an average of \$9.50 per hour but was not paid the extra half time rate for the hours worked over 40 hours in a week as required by the Fair Labor Standards Act. Plaintiff therefore claims the half time overtime rate for each hour worked above 40 in these weeks.

15. Defendants willfully and intentionally refused to pay Plaintiff's overtime wages as required by the Fair Labor Standards Act as Defendants knew of the overtime requirements of the Fair Labor Standards Act and recklessly failed to investigate whether Defendants' payroll

practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiff these wages since the commencement of Plaintiffs employment with Defendants for the time period specified above.

Wherefore, the Plaintiff requests double damages and reasonable attorney fees from Defendants, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for all overtime wages still owing from Plaintiff's entire employment period with Defendants or as much as allowed by the Fair Labor Standards Act along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. *The Plaintiffs request a trial by jury.*

Respectfully Submitted,  
J.H. Zidell, Esq.  
J.H. Zidell, P.A.  
Attorney For Plaintiffs  
300 71<sup>st</sup> Street, Suite 605  
Miami Beach, Florida 33141  
Tel: (305) 865-6766  
Fax: (305) 865-7167  
Email: ZABOGADO@AOL.COM

By:     /s/ J.H. Zidell                      
J.H. Zidell, Esq.  
Florida Bar Number: 0010121

**UNITED STATES DISTRICT COURT**

for the  
Southern District of Florida

SANTOS ROSENDO LINARTE LEZAMA	)
and all others similarly situated under 29	)
U.S.C. 216(b),	)
	)
Plaintiff,	)
vs.	)
	)
ROOF DEPOT USA, LLC,	)
DAVID GARCIA,	)
	)
Defendants.	)
_____	)

**SUMMONS IN A CIVIL ACTION**

To: ROOF DEPOT USA, LLC  
Registered Agent: David Garcia  
5400 NW 37<sup>th</sup> Ave  
Miami, FL 33142

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:

J.H. Zidell, Esq.  
J.H. Zidell P.A.  
300 71<sup>ST</sup> Street, Suite 605  
Miami Beach, Florida 33141

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: \_\_\_\_\_

\_\_\_\_\_

**UNITED STATES DISTRICT COURT**

for the  
Southern District of Florida

SANTOS ROSENDO LINARTE LEZAMA )  
and all others similarly situated under 29 )  
U.S.C. 216(b), )  
) )  
Plaintiff, )  
vs. )  
) )  
ROOF DEPOT USA, LLC, )  
DAVID GARCIA, )  
) )  
Defendants. )  
\_\_\_\_\_ )

**SUMMONS IN A CIVIL ACTION**

To: David Garcia  
5400 NW 37<sup>th</sup> Ave  
Miami, FL 33142

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:

J.H. Zidell, Esq.  
J.H. Zidell P.A.  
300 71<sup>ST</sup> Street, Suite 605  
Miami Beach, Florida 33141

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: \_\_\_\_\_

\_\_\_\_\_

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS: Lezama, Santos Rosendo Linarte and all others similarly situated under 29 USC 2106(a); DEFENDANTS: Roof Depot USA, LLC, David Garcia; (b) County of Residence of First Listed Plaintiff: Miami-Dade; (c) Attorneys: J.H. Zidell, P.A., 300 71st St., Suite 605, Miami Beach, FL 33141 phone: 305-865-6766; (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): [X] 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): PTF DEF Citizen of This State [ ] 1 [ ] 1 Incorporated or Principal Place of Business In This State; Citizen of Another State [ ] 2 [ ] 2 Incorporated and Principal Place of Business In Another State; Citizen or Subject of a Foreign Country [ ] 3 [ ] 3 Foreign Nation [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only): CONTRACT: [ ] 110 Insurance, [ ] 120 Marine, [ ] 130 Miller Act, [ ] 140 Negotiable Instrument, [ ] 150 Recovery of Overpayment & Enforcement of Judgment, [ ] 151 Medicare Act, [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans), [ ] 153 Recovery of Overpayment of Veteran's Benefits, [ ] 160 Stockholders' Suits, [ ] 190 Other Contract, [ ] 195 Contract Product Liability, [ ] 196 Franchise; REAL PROPERTY: [ ] 210 Land Condemnation, [ ] 220 Foreclosure, [ ] 230 Rent Lease & Ejectment, [ ] 240 Torts to Land, [ ] 245 Tort Product Liability, [ ] 290 All Other Real Property; CIVIL RIGHTS: [ ] 440 Other Civil Rights, [ ] 441 Voting, [ ] 442 Employment, [ ] 443 Housing/Accommodations, [ ] 445 Amer. w/Disabilities - Employment, [ ] 446 Amer. w/Disabilities - Other, [ ] 448 Education; PRISONER PETITIONS: Habeas Corpus: [ ] 463 Alien Detainee, [ ] 510 Motions to Vacate Sentence; Other: [ ] 530 General, [ ] 535 Death Penalty, [ ] 540 Mandamus & Other, [ ] 550 Civil Rights, [ ] 555 Prison Condition, [ ] 560 Civil Detainee - Conditions of Confinement; LABOR: [X] 710 Fair Labor Standards Act, [ ] 720 Labor/Mgmt. Relations, [ ] 740 Railway Labor Act, [ ] 751 Family and Medical Leave Act, [ ] 790 Other Labor Litigation, [ ] 791 Empl. Ret. Inc. Security Act; IMMIGRATION: [ ] 462 Naturalization Application, [ ] 465 Other Immigration Actions; FORFEITURE/PENALTY: [ ] 625 Drug Related Seizure of Property 21 USC 881, [ ] 690 Other; BANKRUPTCY: [ ] 422 Appeal 28 USC 158, [ ] 423 Withdrawal 28 USC 157; SOCIAL SECURITY: [ ] 861 HIA (1395ff), [ ] 862 Black Lung (923), [ ] 863 DIWC/DIWW (405(g)), [ ] 864 SSID Title XVI, [ ] 865 RSI (405(g)); FEDERAL TAX SUITS: [ ] 870 Taxes (U.S. Plaintiff or Defendant), [ ] 871 IRS—Third Party 26 USC 7609; OTHER STATUTES: [ ] 375 False Claims Act, [ ] 400 State Reapportionment, [ ] 410 Antitrust, [ ] 430 Banks and Banking, [ ] 450 Commerce, [ ] 460 Deportation, [ ] 470 Racketeer Influenced and Corrupt Organizations, [ ] 480 Consumer Credit, [ ] 490 Cable/Sat TV, [ ] 850 Securities/Commodities/Exchange, [ ] 890 Other Statutory Actions, [ ] 891 Agricultural Acts, [ ] 893 Environmental Matters, [ ] 895 Freedom of Information Act, [ ] 896 Arbitration, [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision, [ ] 950 Constitutionality of State 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, [ ] 8 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; JUDGE: \_\_\_\_\_ DOCKET NUMBER: \_\_\_\_\_

VII. CAUSE OF ACTION: 29 USC §§ 201-216; LENGTH OF TRIAL via 25 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: November 15, 2018; SIGNATURE OF ATTORNEY OF RECORD: \_\_\_\_\_

FOR OFFICE USE ONLY: RECEIPT #, AMOUNT, IFF, JUDGE, MAG JUDGE; Save As..., Print, Reset buttons

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Roof Depot USA 'Refused' to Pay Proper Overtime Rate, Lawsuit Says](#)

---