

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2018 FEB -1 AM 11:59

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

GERALD SINCLAIR, for himself and
on behalf of those similarly situated

Plaintiff,

Case No.: 3:18-cv-187-J-APPDB

vs.

UNITED & STRONG III, INC., a Florida
Profit Corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, GERALD SINCLAIR, ("Plaintiff"), for himself and on behalf of those similarly situated, hereby files this Complaint against Defendant, UNITED & STRONG III, INC. ("Defendant"), and states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq.) ("FLSA") to obtain a judgment against Defendant as to liability, and to recover unpaid wages, liquidated damages, and reasonable attorneys' fees and costs.

2. The jurisdiction of the Court over this controversy is proper pursuant to 28 U.S.C. §1331, as Plaintiff's claims arise under 29 U.S.C. §216(b).

3. Venue is proper in this Court because the acts and omissions alleged in this Complaint took place in this judicial district, and Defendant resides in and regularly

conducts business in this judicial district.

PARTIES

4. At all times material to this action, Plaintiff was a resident of Nassau County, Florida.

5. At all times material to this action, UNITED & STRONG III, INC. was, and continues to be, a Florida Profit Company. Further, at all times material hereto, UNITED & STRONG III, INC. was, and continues to be, engaged in business in Florida, with a principal place of business in Duval County, Florida.

6. At all times material to this action, Plaintiff was an “employee” of Defendant within the meaning of the FLSA.

7. At all times material to this action, Defendant was Plaintiff’s “employer” within the meaning of the FLSA.

8. Defendant was, and continues to be, an “employer” within the meaning of the FLSA.

9. At all times material to this action, UNITED & STRONG III, INC. was, and continues to be, an “enterprise engaged in commerce” and an enterprise engaged in the “handling, selling, or otherwise working on goods and materials that have been moved in or produced for commerce by any person” within the meaning of the FLSA.

10. Based upon information and belief, the annual gross revenue of UNITED & STRONG III, INC. was in excess of \$500,000.00 per annum during the relevant time periods.

11. At all times material to this action, UNITED & STRONG III, INC. had

two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce such as vehicles, large equipment, telephones and computers.

12. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendant.

STATEMENT OF FACTS

13. In or about January 2016, Defendant hired Plaintiff to work as an hourly-paid construction employee, specifically, a Carpenter, for Defendant's construction company.

14. Plaintiff's job duties included, but were not limited to, performing construction work, specifically, carpentry work, at construction sites.

15. At various times material hereto, Plaintiff worked for Defendant in excess of forty (40) hours within a workweek.

16. From at least January 2016, through August 2017, Defendant failed to compensate Plaintiff at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty (40) hours in a single workweek.

17. The policies and practices which led to the failure to pay proper overtime were: 1) Defendant did not count as "hours worked," compensable time spent cleaning the jobsite at the end of the day; and 2) to the extent any overtime hours were counted as hours worked and compensated, Defendant compensated for such overtime hours through a system of "banking" hours, or "comp time," rather than monetary compensation for overtime hours, and counted each overtime hour as only one hour of

banked time.

18. Plaintiff should be compensated at the rate of one and one-half times Plaintiff's regular rate for all hours that Plaintiff worked in excess of forty (40) hours per workweek, as required by the FLSA.

19. Upon information and belief, the majority of Plaintiff's pay and time records are in the possession of Defendant.

20. Plaintiff was denied proper overtime compensation for all overtime hours due to the policies, practices and procedures described in paragraph 17, above.

21. The additional persons who may become Plaintiffs in this action also "worked" for Defendant as hourly paid construction employees, worked under the same terms and conditions, and pursuant to the policies, practices, and procedures applicable to Plaintiff, and were denied proper overtime compensation for all overtime hours due to these policies, practices and procedures.

22. Defendant has violated Title 29 U.S.C. §207 from at least January 2016 through August 2017, in that:

- a. Plaintiff, and other hourly paid construction employees, worked in excess of forty (40) hours in one or more workweeks for the period of employment with Defendant;
- b. No payments or provisions for payment have been made by Defendant to properly compensate Plaintiff, or other hourly paid construction employees, at the statutory rate of one and one-half times his regular rate for all hours worked in excess of forty (40)

hours per workweek, as provided by the FLSA, due to the policies and practices described in paragraph 17, above; and

- c. Defendant failed to maintain proper time records as mandated by the FLSA.

23. Defendant's failure and/or refusal to properly compensate Plaintiff and other hourly paid construction employees at the rates and amounts required by the FLSA was willful, as Defendant is and has been aware of the FLSA mandates and their applicability to Plaintiff's employment, but chose not to pay him at an overtime rate for all of his overtime hours.

24. Defendant failed and/or refused to properly disclose or apprise Plaintiff of his rights under the FLSA.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

25. Plaintiff re-alleges paragraphs 1 through 24 of the Complaint, as if fully set forth herein.

26. From at least January 2016, through August 2017, Plaintiff worked hours in excess of forty (40) in one or more workweeks for which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

27. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

28. Defendant failed to properly disclose or apprise Plaintiff of Plaintiff's

rights under the FLSA.

29. Defendant failed to maintain proper time records as mandated by the FLSA.

30. Defendant's actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by its failure to compensate Plaintiff, and those similarly situated, at the statutory rate of one and one-half times his regular rate of pay for all hours worked in excess of forty (40) hours per workweek when it knew, or with reasonable diligence should have known, such was, and is, due.

31. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff, and those similarly situated suffered, and continue to suffer damages and lost compensation for certain hours worked over forty (40) hours in a workweek, plus liquidated damages.

32. The hourly paid construction employees were also not paid proper overtime for hours worked in excess of forty (40) in one or more workweeks pursuant to the same policies, plans and decisions applicable Plaintiff.

33. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

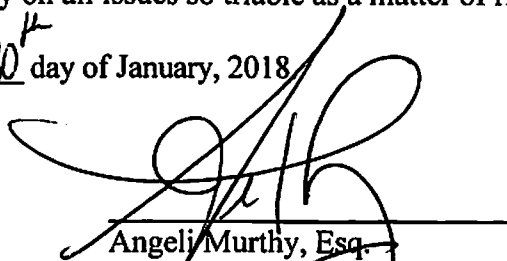
WHEREFORE, Plaintiff, for himself and on behalf of other hourly paid construction employees request conditional certification; pursuant to Section 216(b) of the FLSA, of a collective of hourly-paid construction employees who worked for Defendant over 40 hours in one or more workweeks in the three years prior to the filing of this Complaint; an order permitting Notice to all potential class members; a

Declaration that Defendant's policy violates the FLSA; entry of judgment in Plaintiff's and any opt-in's favor and against Defendant for actual and liquidated damages, as well as costs, expenses and attorneys' fees and such other relief deemed proper by this Court.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

Respectfully submitted this 30th day of January, 2018.



Angeli Murthy, Esq.
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Trial Attorney for Plaintiff

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.)

I. (a) PLAINTIFFS
GERALD SINCLAIR,
for himself and on behalf of those similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Angeli Murthy, Esq., Morgan & Morgan P.A.
600 N. Pine Island Road, S-400, Plantation, FL 33324
(954) 318-0268

DEFENDANTS
UNITED & STRONG III, INC., a Florida Profit Corporation,

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

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

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)
(For Diversity Cases Only)
Citizen of This State PTF 1 DEF 1 Incorporated or Principal Place of Business In This State
Citizen of Another State PTF 2 DEF 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country PTF 3 DEF 3 Foreign Nation PTF 4 DEF 4 PTF 5 DEF 5 PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION: <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS: <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY: <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS: <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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 - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1331, 29 U.S.C. §§ 201, 207, and 216(b)
Brief description of cause:
Unpaid Wages

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Unknown CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 1/30/18 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT \$400 APPLYING IFP _____ JUDGE 20 MAG. JUDGE POB

JAX026639

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Florida Construction Company Shaves Off Employees' Due Wages](#)
