

**SUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.:

ELVIN VASQUEZ, and all others similarly
situated under 29 U.S.C 206(B),

Plaintiff,

v.

CONCRETE LABOR SERVICES, INC.,
a Florida Corporation, and
ORESTES BOFFIL, individually,

Defendants.

_____ /

COMPLAINT

Plaintiff, Elvin Vasquez (“Vasquez”), on behalf of himself, and others similarly situated, under the provisions of the Fair Labor Standard Act (“FLSA”) of 1938, as amended, 29 U.S.C. § 216(b), files this Complaint against Defendants, Concrete Labor Services, Inc., (“Concrete Labor”) and Orestes Boffil (“Boffil”) and alleges, as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(4), because these claims seek redress for violations of Plaintiff’s federal civil and statutory rights.

2. At all material times, Concrete Labor is, and was, a Florida corporation, authorized to conduct and conducting business in Miami-Dade County, Florida.

3. At all material times, Boffil is *sui juris* and a resident of Miami-Dade County, Florida.

4. At all material times, Vasquez, is *sui juris* and a resident of Miami-Dade County, Florida.

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) as a substantial part of the events or omissions giving rise to the claims that occurred in this judicial district.

6. This action is brought by Plaintiff to recover from the Employer unpaid overtime wage compensation, as well as an additional amount as liquidated damages, costs and reasonable attorney's fees pursuant to the FLSA, §§ 206, 207.

7. Upon information and belief, the annual gross revenue of Concrete Labor was at all times material hereto in excess of \$500,000.00 per annum.

8. At all material times hereto, Concrete Labor was and continues to be an enterprise engaged in interstate commerce.

9. At all material times hereto, Concrete Labor operated as an organization which purchased equipment and products manufactured outside the state of Florida; provided services to or sold, marketed, or handled goods and materials to customers throughout the United States; provided services for goods sold and transported from across state lines; obtained, solicited, and accepted funds from sources outside the state of Florida; used telephonic transmissions traversing state lines in the ordinary course of business; transmitted funds outside the state of Florida; and otherwise regularly engaged in interstate commerce.

10. As a result of the services provided by Concrete Labor, two or more of its employees regularly handled and worked with goods and materials moved in or produced in interstate commerce.

11. By reason of the foregoing, Concrete Labor is and was, during all times material hereto, an enterprise engaged in commerce or in the production of goods for commerce as defined by the FLSA, 29 U.S.C. §§ 203(r)-(s), and Plaintiff is within interstate commerce.

12. Plaintiff and those similarly situated employees regularly utilized and handled materials, equipment and goods manufactured and purchased from outside the state of Florida and regularly used the instrumentalities of interstate commerce in their world.

13. Upon information and belief, Boffil is an officer/director of Concrete Labor and has economic and day-to-day control of Concrete Labor, and of the nature and structure of Plaintiff's employment relationship with Concrete, and is therefore an employer as defined by 29 U.S.C., Section 203 (d).

GENERAL ALLEGATIONS

14. Upon information and belief, Employer employed Plaintiff from approximately October, 2016 through October, 2017 ("the relevant time period").

15. During the relevant time period, Plaintiff was employed as a non-exempt carpenter earning an average of \$17.00 per hour.

16. At all material times, Concrete Labor's gross annual revenues were in excess of \$500,00.00

17. Throughout his employment with Concrete Labor, Plaintiff routinely worked for Concrete Labor from Monday through Saturday, over forty (40) regular hours a week and approximately twenty (20) to twenty-two (22) hours of overtime per week.

18. Notwithstanding, Concrete Labor willfully and intentionally failed/refused to pay to Plaintiff the federally required overtime rate for the overtime hours he worked.

19. Employer knew of the overtime requirements of the Fair Labor Standards Act and willfully/intentionally/recklessly failed to investigate whether their payroll practices were in accordance with the Fair Labor Standards Act.

20. As a result, Plaintiff has suffered damages and is entitled to receive overtime compensation.

21. Plaintiff has complied with all conditions precedent to filing this action.

22. Plaintiff had retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorney's fee.

PRE-SUIT DEMAND

23. On April 13, 2018, Plaintiff through his undersigned counsel, sent to the Concrete Labor a written pre-suit demand regarding the violations of the overtime provisions of the FLSA, and requesting Employer pay the amounts owed to Plaintiff, but Concrete Labor failed/refused to do so ("Demand"). A copy of the Demand is attached as "**Exhibit A**".

COUNT I -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST CONCRETE LABOR

24. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-two (22) above.

25. This is an action against Concrete Labor for overtime compensation pursuant to 29 U.S.C. § 216(B).

26. Upon information and belief, Concrete Labor has employed and currently employs several other similarly situated employees, like Plaintiff, who have not been paid overtime for

work performed in excess of forty (40) hours weekly, within three (3) years from the filing of this Complaint.

27. Plaintiff routinely worked in excess of forty (40) hours per week for Concrete Labor.

28. Specifically, Plaintiff estimates that he routinely worked for Concrete Labor from Monday through Saturday, over forty (40) regular hours a week and approximately twenty (20) to twenty-two (22) hours of overtime per week.

29. Plaintiff was a non-exempt employee, entitled to be paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

30. Concrete Labor knew or should have known that Plaintiff suffered or was permitted to work overtime for Concrete Labor as defined in 29 U.S.C. § 203 (g).

31. Concrete Labor failed and/or refused to compensate Plaintiff for such work in excess of forty (40) hours at rates no less than one and one-half times the regular rates for which he was employed, contrary to the provisions of 29 U.S.C. § 207 (a).

32. At all material times, Concrete Labor knew or should have known that such refusal and/or failure is prohibited by the FLSA and intentionally and willfully violated the FLSA as cited herein.

33. At all material times, Concrete Labor failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

COUNT II -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST ORESTES BOFFIL

34. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-two (22) above.

35. This is a collective action against Boffil for overtime compensation pursuant to 29 U.S.C. § 216(B).

36. Upon information and belief, Boffil has employed and currently employs several other similarly situated employees, like Plaintiff, who have not been paid overtime for work performed in excess of forty (40) hours weekly, within three (3) years from the filing of this Complaint.

37. Plaintiff routinely worked in excess of forty (40) hours per week for Boffil.

38. Specifically, Plaintiff estimates that he worked 20-22 hours of overtime per week for Boffil.

39. Defendant, Boffil, had day-to-day and operational control of Plaintiff and his compensation structure and is therefore an employer pursuant to 29 U.S.C. § 203(d).

40. Plaintiff was a non-exempt employee, entitled to be paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

41. Boffil knew or should have known that Plaintiff suffered or was permitted to work overtime for Concrete Labor as defined in 29 U.S.C. § 203 (g).

42. Boffil failed and/or refused to compensate Plaintiff for such work in excess of forty (40) hours at rates no less than one and one-half times the regular rates for which he was employed, contrary to the provisions of 29 U.S.C. § 207 (a).

43. At all material times, Boffil knew or should have known that such refusal and/or failure is prohibited by the FLSA and intentionally and willfully violated the FLSA as cited herein.

44. At all material times, Boffil failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

45. As a result, Plaintiff has been damaged and is entitled to be compensated for his loss.

PLAINTIFF'S DEMAND FOR JURY TRIAL

44. Plaintiff hereby demands a jury trial of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Elvin Vasquez, respectfully requests that judgment be entered in his favor against Defendants, Concrete Labor, as follows:

(a) Declaring pursuant to 28 U.S.C §2201 and §2202, that the acts and practices of the Defendants complained of herein are in violation of the overtime wage provisions of the FLSA;

(b) Permanently enjoining the Defendants, their agents, officers and employees from engaging in all practices found by this court to be in violation of the overtime wage provisions of the FLSA;

(c) Awarding Plaintiff damages against Defendants, for lost and withheld compensation, and overtime compensation for all hours that he worked for Defendants over forty (40) hours per week, but for which he was not compensated at the required overtime rate;

(d) Awarding Plaintiff liquidated damages;

(e) Awarding Plaintiff reasonable attorney's fees, costs, interest, and expenses of this litigation pursuant to 29 U.S.C. §216(b);

(f) Ordering any other further relief that this Court may deem just and proper.

Respectfully submitted this 7th day of June, 2018.

By: /s/ Monica Espino
Florida Bar No. 834491

ESPINO LAW
Attorney for Plaintiff
2655 Le June Road
Miami, Florida 33129
Telephone: (305) 704-3172
Facsimile: (305) 722-7378
E-mail: me@espino-law.com

EXHIBIT A



April 13, 2018

Sent via and U.S. Mail & Certified Mail/Return-Receipt

Concrete Labor Services, Inc.

c/o Orestes Bofil

8040 NW 95 ST

Suite 336

Hialeah Gardens, FL 33016

Re: Elvin Vasquez ("Vasquez") v. Concrete Labor Services, Inc. ("CLS")

Dear Mr. Bofil:

Please be advised the undersigned has been retained by Mr. Vasquez in connection with overtime issues stemming from his employment with CLS ("Employer"). This correspondence shall serve as my client's demand for payment of unpaid wages, including but not limited to regular, and overtime wages for hours worked by him pursuant to the Federal Fair Labor Standards Act.

Mr. Vasquez has been employed as a carpenter by CLS from approximately October, 2016 through October, 2017. During his entire employment, Mr. Vasquez routinely worked from Monday through Saturday, 10-12 hours per day, for an average of 60-62 hours per week. Notwithstanding, CLS intentionally failed/refused to pay to him the federally required overtime wages for the hours worked by him in excess of 40 hours per week. Instead, CLS has intentionally, impermissibly and wrongfully paid Mr. Vasquez straight time wages for his overtime hours worked.

Mr. Vasquez should have been paid on an hourly, non-exempt rate during the entire course of his employment with CLS. As such, he is unequivocally entitled to overtime pay for all overtime hours worked each work week, under both federal and state law. Under the Fair Labor Standards Act (FLSA), employers must pay employees overtime pay for hours worked in excess of forty (40) in a workweek of at least one and one-half times their regular rates of pay.

Further, Mr. Vasquez's position does not fall under any of the exemptions that would allow CLS not to pay to him overtime. He does not qualify under any of the permissible exemptions, since he is not an Executive, Administrative, or Professional employee, nor does he qualify for the

"A"



Outside Sales exemption or the Retail and Service Establishment exemption, as he does not do any selling whatsoever.

As you are aware, federal law requires all employers to keep records of the hours worked each day and each workweek by the employer for at least three (3) years. We, therefore, presume you have these records showing the hours worked by my client for and during the course of his employment with CLS.

Both federal and state law also provide for damages, penalties, and attorney's fees if an employee is not paid overtime as required by applicable law. If litigation were commenced, each of my clients would be entitled to the following:

1. All unpaid overtime wages,
2. An additional penalty in an amount equal to the overtime wages not paid, and
3. Attorney's fees and costs.

As a result, we are confident that the Department of Labor will agree with our position and analysis regarding your failure to pay overtime wages and the required damages, penalties, and attorney's fees resulting from litigating this claim in court or filing a formal complaint with DOL to enforce the mandates after DOL conducts a full investigation of CLS. However, nonetheless, my client has not yet filed a formal complaint with DOL or a civil action in district court against CLS. My client would prefer to resolve this matter amicably, without the need for litigation, and/or the filing of a formal complaint with the DOL, which may inevitably result in an on-site investigation of CLS.

Based on the foregoing, at this time, my client demands the overtime compensation he is required to be paid by law for the applicable period, liquidated damages and attorney's fees. Please note that should my client need to proceed to file a lawsuit, your exposure for attorney's fees rises exponentially.

Please contact me within seven (7) days of this letter to let me know if you are willing to attempt to resolve this matter voluntarily. If I do not hear from you within 7 days of your receipt of this letter, my client has authorized me to proceed with all legal remedies available to him.



I caution you that state and federal law prohibit you from taking any retaliatory action against my clients as a result of (i) this notification to you, (ii) our intention to notify DOL and file a civil action if you fail to comply with our request, or (iii) my client's request for back wages and attorney's fees.

GOVERN YOURSELVES ACCORDINGLY.

Sincerely,

ESPINO LAW

A handwritten signature in black ink, appearing to read "Monica Espino", written over the printed name.

Monica Espino

cc: Elvin Vasquez

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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 ELVIN VASQUEZ

DEFENDANTS CONCRETE LABOR SERVICES, INC., A Florida corporation, and Orestes Boffil, individually.

(b) County of Residence of First Listed Plaintiff (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) Espino Law, PL, 2655 S LeJeune Road, Suite 802, Coral Gables, FL 33134

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

(d) Check County Where Action Arose: 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 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 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 PTF DEF 2 2
Citizen or Subject of a Foreign Country PTF DEF 3 3
Incorporated or Principal Place of Business in This State PTF DEF 4 4
Incorporated and Principal Place of Business in Another State PTF DEF 5 5
Foreign Nation PTF DEF 6 6

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

Click here for: Nature of Suit Code Descriptions

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

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed (Sec 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 NO b) Related Cases YES NO

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. SECTION 216(b)

LENGTH OF TRIAL via 3 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:

PRY DEMAND: YES NO

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

DATE June 7, 2018

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of the attorney.

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 [dropdown arrow]

ELVIN VASQUEZ)

)

)

)

Plaintiff(s))

v.)

Civil Action No. _____

CONCRETE LABOR SERVICES, INC., a Florida corporation, and ORESTES BOFFIL, individually)

)

)

)

Defendant(s))

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CONCRETE LABOR SERVICES, INC
c/o Orestes Boffil, its Registered Agent
8040 NW 95 Street, Suite 336
Hialeah Gardens, FL 33016

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:

ESPINO LAW, PL
2655 S. LEJEUNE ROAD, SUITE 802
CORAL GABLES, FL 33134

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

ELVIN VASQUEZ)

)

)

)

)

Plaintiff(s)

)

v.

)

Civil Action No.

CONCRETE LABOR SERVICES, INC., a Florida
corporation, and ORESTES BOFFIL, individually

)

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)

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)

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* ORESTES BOFFIL
8040 NW 95 Street, Suite 336
Hialeah Gardens, FL 33016

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:

ESPINO LAW, PL
2655 S. LEJEUNE ROAD, SUITE 802
CORAL GABLES, FL 33134

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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Concrete Labor Services Tagged with FLSA Lawsuit](#)
