

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. ____

KATHLEEN VAUGHN, individually &
on behalf of all similarly situated,

Plaintiff,

v.

LAMI PRODUCTS, LLC,

Defendant.

COMPLAINT & JURY DEMAND

1. The Plaintiff, Kathleen Vaughn, sues Defendant, LaMi Products, LLC, pursuant to 29 U.S.C. § 216(b) for unpaid overtime in violation of 29 U.S.C. § 207(a)(1).

2. The Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

I. Parties

3. Defendant is a Delaware limited liability company.
4. Defendant is owned by Larry Dion and Michael Dion.
5. Defendant began with one item in 1978.
6. Defendant manufactured the product at night and sold it by day.
7. Defendant evolved into a 250,000 square foot warehouse operation with over 700 employees.

8. Defendant services over 7,000 grocery stores and selling into 20,000 plus retail outlets nationwide from the keys of Florida, up to New England, out to Seattle, down to San Diego.

9. Defendant conducts business in Miami, Florida among other cities and states.

10. Plaintiff is a Florida resident.

11. Plaintiff performed work for Defendant in Miami, Florida as well as in other Florida cities.

12. Defendant hired Plaintiff from Florida.

13. Defendant paid Plaintiff in Florida.

14. Defendant terminated Plaintiff in Florida.

15. Defendant withheld Florida unemployment taxes for Plaintiff.

16. Other than Florida Plaintiff performed work for Defendant in Georgia, Arkansas, Tennessee, Pennsylvania and Ohio.

II. Background

17. Plaintiff was a merchandiser for Defendant.

18. Defendant has employed in excess of 500 merchandisers similarly situated to the named Plaintiff within the past three years.

19. Plaintiff worked for Defendant from on or about January 2003 to on or about June 2016.

20. During Plaintiff's employment Defendant did not pay its merchandisers for all hours worked.

21. Defendant has been sued for unpaid overtime in the past three years.

22. Defendant has agreed to pay merchandisers for both state and federal wage and hour violations in previous cases.

23. The merchandisers that Defendant has paid for unpaid wage and hour violations within the past three years are similarly situated to the named Plaintiff.

24. Defendant has not paid all of its merchandisers the unpaid overtime and liquidated damages due to them pursuant to the Fair Labor Standards Act (FLSA or Act).

25. In fact, there are over 500 merchandisers similarly situated to the named Plaintiff that have neither released Defendant of their FLSA rights nor been paid their unpaid wages pursuant to the Act.

26. Plaintiff(s) are any merchandisers: (A) that worked for Defendant anytime within three years of this complaint; (B) subjected to Defendant's Merchandiser Pay Policy; (C) worked forty or more hours in one or more workweeks without receiving proper overtime; and (D) that have not waived their FLSA claim.

27. Defendant did not keep accurate time records for Plaintiff(s).

28. Defendant allocated an artificial amount of time worked for each of Plaintiff(s) assigned stores.

29. The time allocated for each Plaintiff was not an accurate reflection of the total hours that Plaintiff(s) actually worked at the store.

30. Plaintiff(s) typically worked at 2 to 4 stores in a workday.

31. Plaintiff(s) had to travel between stores.

32. Defendant did not pay Plaintiff(s) for travel time between stores.

33. Plaintiff(s) on occasion travelled overnight for a job.

34. Defendant did not pay Plaintiff(s) for travel that is all in the day's work pursuant to 29 C.F.R. § 785.38.

35. Defendant did not pay Plaintiff(s) for travel away from home community pursuant to 29 C.F.R. § 785.39.

36. Plaintiff(s) performed some work for Defendant from home.

37. Plaintiff(s) completed paper work from home for which they were not compensated.

38. Defendant would communicate with Plaintiff(s) by email without actually paying Plaintiff(s) for such work time.

39. Defendant knew Plaintiff(s) travelled between jobs without pay.

40. Defendant knew Plaintiff(s) travelled away from their home communities without pay.

41. Defendant knew Plaintiff(s) completed paperwork for which they were not paid.

42. Defendant reimbursed Plaintiff(s) for such costs as postage, gas and oil.

43. Defendant did not pay Plaintiff(s) for all hours worked.

44. Defendant was sued under the FLSA and common law for wage and hour violations in June 2015 and settled with a limited number of opt-ins in October

2015. See *Leake v. Lami Products, Inc. et al*, 2:15-cv-3487-LFR (E.D. Pa. 2015)[D.E. 1, 5, 6 & 9].

45. After the limited *Leake* settlement, Defendant was once again sued under the FLSA and state law in November 2015 and reached a class settlement that was finally approved in November 2016. See *Cikra v. Lami Products, LLC*, 2:15-cv-6166-WB (E.D. Pa. 2015).

46. In *Cikra* notice pursuant to the FLSA was sent to putative class members only after a settlement had been reached.

47. In other words, if a merchandiser wanted to opt-in to the *Cikra* case they would have been bound by a settled achieved prior to notice being issued.

48. The named Plaintiff chose not to opt-in to the *Cikra* FLSA collective action, because she did not want to be bound by a settlement reached prior to her participation.

49. In fact, hundreds of merchandisers did not opt-in to the *Cikra* FLSA collective action.

50. The FLSA does not prohibit a second collective action. See *Akins v. Worley Catastrophe Response, LLC*, 921 F.Supp.2d 593 (E.D. La. 2013); *Hautur v. Kmart Corp.*, 2015 WL 5567912 (W.D.N.Y. 2015).

III. Failure to Pay Overtime in violation of the FLSA

51. Defendant has annual gross revenues of over \$500,000.

52. Defendant employs employees that handle goods or materials that have moved in interstate commerce, such as merchandise.

53. Defendant is an enterprise as defined by 29 U.S.C. § 203(r)(1).

54. Defendant is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1)(A).

55. Defendant was an employer of Named Plaintiff as defined by 29 U.S.C. § 203(d).

56. Defendant has employed over 500 Merchandisers similarly situated to Named Plaintiff.

57. Named Plaintiff was paid on an hourly basis pursuant to Defendant's Merchandiser Pay Policy which did not account for all hours worked and allocated an artificially low number of hours for each merchandiser.

58. Defendant was required to pay Named Plaintiff overtime pursuant to 29 U.S.C. § 207(a)(1).

59. Defendant did not pay Named Plaintiff all overtime owed.

60. Defendant did not pay Named Plaintiff for travel that is all in the day's work pursuant to 29 C.F.R. § 785.38.

61. Defendant did not pay Named Plaintiff for travel away from home community pursuant to 29 C.F.R. § 785.39.

62. Defendant did not pay Named Plaintiff for administrative tasks such as scanning, emailing, preparing expense reports and journals as well as boxing and shipping packages.

63. Defendant did not pay Plaintiff(s) for all hours worked.

64. Defendant owes Named Plaintiff unpaid overtime.

65. Defendant owes Plaintiff(s), merchandisers, unpaid overtime for the same reason it owes Named Plaintiff unpaid overtime.

66. Defendant acted in reckless disregard of 29 C.F.R. §§ 785.38 & 39.

67. Defendant was aware of the FLSA when it employed Named Plaintiff.

68. Defendant willfully violated the FLSA.

69. Any merchandiser that did not opt-in to the Pennsylvania cases is similarly situated to Named Plaintiff.

70. Plaintiff(s) are owed unpaid overtime.

71. Plaintiff(s) sue Defendant pursuant to 29 U.S.C. § 216(b).

72. Plaintiff(s) demand trial by jury.

Wherefore, Plaintiff(s) demand notice of this lawsuit to all similarly situated, unpaid overtime, liquidated damages, declaration that Defendant violated the FLSA, trial by jury, judgment, attorneys' fees and costs.

Respectfully submitted this 25th day of January 2017,

/s/ Bernard R. Mazaheri

Bernard R. Mazaheri

Florida Bar Number 643971

Christina J. Thomas

Florida Bar Number 74846

Morgan & Morgan

333 Vine St Ste 1200

Lexington, Kentucky 40507

Tel: (859) 219-4529

Email – bmazaheri@forthepeople.com

cthomas@forthepeople.com

Counsel for Plaintiff(s)

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
 KATHLEEN VAUGHN, individually &
 on behalf of all similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Morgan & Morgan, 333 W Vine St Ste 1200, Lexington, Kentucky 40507;
 Tel - (859)219-4529

DEFENDANTS
 LAMI PRODUCTS, LLC

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

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

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 & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (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 & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <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 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product 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	<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"/> 840 Trademark	<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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<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	<input type="checkbox"/> 861 HIA (1395ff) <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))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 29 U.S.C. Sec. 216(b)

Brief description of cause:
 Defendant failed to pay its merchandisers for all hours worked which deprived the class of unpaid overtime

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

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

DATE: 01/25/2017 SIGNATURE OF ATTORNEY OF RECORD: Bernard R. Mazaheri

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

KATHLEEN VAUGHN, individually &
on behalf of all similarly situated,

Plaintiff(s)

v.

LAMI PRODUCTS, LLC,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LAMI PRODUCTS, LLC
c/o Corporation Service Company (Registered Agent)
2711 Centerville Rd Ste 400
Wilmington, DE 19808

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: Bernard R. Mazaheri
Morgan & Morgan
333 W Vine St Ste 1200
Lexington, Kentucky 40507

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

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: [Class Action Claims LaMi Products Owed Unpaid Overtime](#)
