

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO.:

DAVID A. WALKER JR.,
and other similarly-situated individuals,

Plaintiff (s),

v.

ANNELLIE'S CAR WASH LLC
and RENE L. MORENO, individually,

Defendants,

_____ /

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216(b))

COMES NOW the Plaintiff DAVID A. WALKER JR., and other similarly-situated individuals, by and through the undersigned counsel, and hereby sue Defendants ANNELLIE'S CAR WASH LLC and, RENE L. MORENO individually and alleges:

JURISDICTION VENUES AND PARTIES

1. This is an action to recover money damages for unpaid minimum wages under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) ("the Act").
2. Plaintiff DAVID A. WALKER JR. is a resident of Broward County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant ANNELLIE'S CAR WASH LLC (hereinafter ANNELLIE'S CAR WASH, or Defendant) is a Florida corporation having its main place of business in Broward County,

Florida, where Plaintiff worked for Defendant, and at all times material hereto, Defendant was engaged in interstate commerce.

4. The individual Defendant RENE L. MORENO was and is now, owner/director of the Corporation. Defendant RENE L. MORENO is the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)].
5. All the action raised in this complaint took place in Broward County Florida, within the jurisdiction of this Court.

GENERAL ALLEGATIONS

6. This cause of action is brought by Plaintiff DAVID A. WALKER JR. to recover from Defendants minimum wages, overtime compensation, liquidated damages, and the costs and reasonably attorney's fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLSA or the "ACT").
7. Corporate Defendant ANNELLIE'S CAR WASH provides car wash services in Broward County at 3501 West Oakland Park Blvd., Lauderdale Lakes, Florida 33311.
8. Plaintiff worked in this location since 2004, or more than 12 years. This business was formerly known as OAKLAND CAR SERVICE, INC. on or about December 2015, Defendant ANNELLIE'S CAR WASH took over the place.
9. Therefore, Defendant ANNELLIE'S CAR WASH employed Plaintiff DAVID A. WALKER JR. as a non-exempt tipped car wash employee, approximately from December 8, 2015 to September 24, 2016, or 41 weeks.

10. During the relevant time of employment with ANNELLIE'S CAR WASH Plaintiff worked from Friday to Sunday, from 8:00 Am to 6:00 PM (10 hours each day). Plaintiff was unable to take any bona fide lunch, and he worked a total of 30 hours every week.
11. Plaintiff and all individuals similarly situated, did not punch in and out, but they were forced to maintain the regular schedule. This schedule was strictly enforced by Defendants, and Plaintiff and other similarly situated individuals were sanctioned with suspensions, and they were threatened with termination, if they did not comply with the established schedule.
12. Plaintiff and other employees similarly situated were paid a piece-rate of \$3.00 per car. Usually, Plaintiff was paid an average of \$60.00 weekly. Additionally, Plaintiff received tips for an average of \$20.00 weekly, which totaled \$80.00 per week. This means that Plaintiff was paid an average of \$2.66 and an hour, not even the Federal minimum wage.
13. Plaintiff and all individuals similarly situated were not paid minimum wages at the Federal minimum wage rate of \$7.25 as required by the Fair Labor Standards Act.
14. Defendant failed to keep accurate records and to track hours worked, tips received, in order to make sure that Plaintiff's piece rate, plus tips received were enough to meet at least the mandatory Federal minimum of \$7.25.
15. To circumvent FLSA's regulations, Plaintiff and other individuals similarly situated were wrongly classified as "contract laborers" or "independent contractors", and thus not treating them as employees covered by the FLSA's provisions.
16. Plaintiff and all individuals similarly situated were paid daily on cash basis, and they were not provided with any paystub detailing hours worked, wage rate etc. etc.

17. Therefore, Defendant failed to pay Plaintiff and other similarly situated individuals minimum and overtime wages according to the minimum wages, and they violated all the provisions of the Fair Labor and Standards Act protecting workers.
18. Plaintiff complained many times to the managers, and supervisors and requested to be paid at least minimum wages and overtime hours.
19. On or about September 24, 2016, Plaintiff complained to Defendant for the last time. the Defendant refused to pay Plaintiff minimum wages, and as a result of Plaintiff's complaints, Plaintiff was fired the same day.
20. Plaintiff DAVID A. WALKER JR. seeks to recover any unpaid minimum wages, retaliatory damages, and any other relief as allowable by law.
21. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendants who are and who were subject to the unlawful payroll practices and procedures of Defendants and were not paid minimum and overtime wages at the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:

**F.L.S.A. WAGE AND HOUR FEDERAL STATUTORY VIOLATION: FAILURE TO
PAY MINIMUM WAGE; AGAINST ALL DEFENDANTS**

22. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-22 of this complaint as if set out in full herein.
23. Defendant ANNELLIE'S CAR WASH was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) (1) (A). Defendant provides car wash services. Defendant has more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently using

the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involved those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.

24. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a car washer employee, and through his daily activities, handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

25. This action is brought by Plaintiff to recover from the Employer unpaid minimum wages, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. §206. U.S.C. §206 states "Every employer shall pay to each 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, wages at the following rates:

(1) Except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after May 25, 2008;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day.

26. Defendant ANNELLIE'S CAR WASH employed Plaintiff DAVID A. WALKER JR. as a non-exempt tipped car wash employee, approximately from December 8, 2015 to September 24, 2016, or 41 weeks.
27. During the relevant time of employment with ANNELLIE'S CAR WASH Plaintiff worked from Friday to Sunday, from 8:00 AM to 6:00 PM (10 hours each day). Plaintiff was unable to take any bona fide lunch, and he worked a total of 30 hours every week.
28. Plaintiff and all individuals similarly situated, did not punch in and out, but they were forced to maintain a regular schedule. This schedule was strictly enforced by Defendants, and Plaintiff and other similarly situated individuals were sanctioned with suspensions, and they were threatened with termination, if they did not comply with the established schedule.
29. Plaintiff and other employees similarly situated were paid a piece-rate of \$3.00 per car. Usually, Plaintiff was paid an average of \$60.00 weekly. Additionally, Plaintiff received tips for an average of \$20.00 weekly, which totaled \$80.00 per week. This means that Plaintiff was paid an average of \$2.66 and an hour, not even the Federal minimum wage.
30. Plaintiff and all individuals similarly situated were not paid minimum wages at the Federal minimum wage rate of \$7.25 as required by the Fair Labor Standards Act.
31. Defendant failed to keep accurate records and to track hours worked, tips received, in order to make sure that Plaintiff's piece rate, plus tips received were enough to meet at least the mandatory Federal minimum of \$7.25.
32. To circumvent FLSA's regulations, Plaintiff and other individuals similarly situated were wrongly classified as "contract laborers" or "independent contractors", and thus not treating them as "employees covered by the FLSA's provisions.

33. Plaintiff and all individuals similarly situated were paid daily on cash basis, and they were not provided with any paystub detailing hours worked, wage rate etc. etc.
34. Therefore, Defendant failed to pay Plaintiff and other similarly situated individuals, minimum wages according to the provisions of the Fair Labor and Standards Act, 29 U.S.C. §206. U.S.C. §206
35. Plaintiff and all individuals similarly situated were not provided with paystubs detailing hours worked, wage rate etc. etc.
36. The records, if any, concerning the number of hours actually worked by Plaintiff and all other employees, and the compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant did not maintain accurate and complete time records of hours worked by Plaintiff.
37. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.
38. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid wages are as follows:

*Please note that these amounts are based on a preliminary calculation and that these figures could be subject to modification as discovery could dictate.

*Florida minimum wage for 2016 is \$8.05, which is higher than Federal minimum wage. As per FLSA regulations the higher minimum wage applies.

a. Total amount of alleged unpaid wages:

Six Thousand Six Hundred Twenty-Nine Dollars and 70/100 (\$6,629.70)

b. Calculation of such wages:

Total relevant weeks of employment: 41 weeks

Total number of weeks: 41

Total number of hours worked: 30 hours weekly

Total paid: \$80.00 weekly:30 hours=\$2.66 an hour

Applied FL Minimum wage: \$8.05

FL Minimum wage rate \$8.05-\$2.66 paid = \$5.39 Min. wage difference

Difference Min. wage \$5.39 x 30 hours=\$161.70 weekly x 41 weeks=\$6,629.70

c. Nature of wages:

This amount represents unpaid Federal minimum wages.

39. Defendant ANNELLIE'S CAR WASH unlawfully failed to pay minimum wages to Plaintiff. Plaintiff seeks to recover any unpaid minimum wages accumulated from the date of hire and to his last day of employment with Defendant.
40. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of minimum wages as required by the Fair Labor Standards Act and remains owing Plaintiff these minimum wages since the commencement of Plaintiff employment with Defendant as set forth above, and Plaintiff is entitled to recover double damages.
41. Defendant never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their Federal rights to overtime and minimum wage payments.
42. Defendant violated the Posting requirements of 29 U.S.C. § 516.4.
43. At the times mentioned, individual Defendant RENE L. MORENO was the owner/director of ANNELLIE'S CAR WASH. Defendant RENE L. MORENO was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)]. In that, this individual Defendant acted directly in the interests of ANNELLIE'S CAR WASH in relation to its employees, including Plaintiff and others similarly situated. Defendant RENE L. MORENO had financial and operational control of the corporation, determined Plaintiff and other similarly situated employees' working conditions, and is jointly liable for Plaintiff's damages.

44. Defendants ANNELLIE'S CAR WASH and RENE L. MORENO willfully and intentionally refused to pay Plaintiff minimum wages as required by the law of the United States, and remain owing Plaintiff these minimum wages as set forth above.

45. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAVID A. WALKER JR. respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff and against the Defendants ANNELLIE'S CAR WASH and RENE L. MORENO on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and
- B. Award Plaintiff actual damages in the amount shown to be due for minimum wages, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff DAVID A. WALKER JR. and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT II:
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)
RETALIATORY DISCHARGE; AGAINST ALL DEFENDANTS

46. Plaintiff DAVID A. WALKER JR. re-adopts each and every factual allegation as stated in paragraphs 1-22 of this complaint as if set out in full herein.
47. This action arises under the laws of the United States.
48. Defendant ANNELLIE’S CAR WASH was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) (1) (A). Defendant provides car wash services. Defendant has more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant’s business activities involved those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.
49. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a car washer employee, and through his daily activities, handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.
50. By reason of the foregoing, Defendant’s business activities involve those to which the Fair Labor Standards Act applies.
51. 29 U.S.C. § 206 (a) (1) states “...an employer must pay a minimum wage of \$5.15/hr to an employee who is engaged in commerce....” [29 U.S.C. § 206 (a) (1)].

52. Likewise, 29 U.S.C. 215(a)(3) states... it shall be unlawful for any person— “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding,.....”
53. Defendant ANNELLIE’S CAR WASH employed Plaintiff DAVID A. WALKER JR. as a non-exempt tipped car wash employee, approximately from December 8, 2015 to September 24, 2016, or 41 weeks.
54. During the relevant time of employment with ANNELLIE’S CAR WASH Plaintiff worked from Friday to Sunday, from 8:00 Am to 6:00 PM (10 hours each day). Plaintiff was unable to take any bona fide lunch, and he worked a total of 30 hours every week.
55. Plaintiff and other employees similarly situated were paid a piece-rate of \$3.00 per car. Usually, Plaintiff was paid an average of \$60.00 weekly. Additionally, Plaintiff received tips for an average of \$20.00 weekly, which totaled \$80.00 per week. This means that Plaintiff was paid an average of \$2.66 and an hour, not even the Federal minimum wage.
56. Plaintiff and all individuals similarly situated were not paid minimum wages at the Federal minimum wage rate of \$7.25 as required by the Fair Labor Standards Act.
57. Defendant failed to keep accurate records and to track hours worked, tips received, in order to make sure that Plaintiff’s piece rate, plus tips received were enough to meet at least the mandatory Federal minimum of \$7.25.
58. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.
59. To circumvent FLSA’s regulations, Plaintiff and other individuals similarly situated were wrongly classified as “contract laborers” or “independent contractors”, and thus not treating them as “employees covered by the FLSA’s provisions.

60. Plaintiff and all individuals similarly situated were paid daily on cash basis, and they were not provided with any paystub detailing hours worked, wage rate etc. etc.
61. Therefore, Defendant failed to pay Plaintiff and other similarly situated individuals minimum wages according to all the provisions of the Fair Labor and Standards Act.
62. Plaintiff complained many times to the owner of the business and supervisors Mark, Pete, and Ned, and requested to be paid at least minimum wages.
63. These complaints constitute protected activity under the Fair Labor Standards Act.
64. On or about September 24, 2016, Plaintiff complained to the owner of the business Rene L. Moreno, he refused to pay Plaintiff minimum wages and overtime hours, and as a result of Plaintiff's complaints, Plaintiff was fired by Defendant the same day.
65. Plaintiff performed his duties satisfactorily, there was no reason to fire him other than retaliation for his complains about unpaid wages.
66. There was close proximity between Plaintiff's last protected activity and his retaliatory termination.
67. At the times mentioned, individual Defendant RENE L. MORENO was the owner/director of ANNELLIE'S CAR WASH. Defendant RENE L. MORENO was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that this individual Defendant acted directly in the interests of ANNELLIE'S CAR WASH in relation to its employees, including Plaintiff and others similarly situated. Defendant RENE L. MORENO had financial and operational control of the corporation, determined Plaintiff and other similarly situated employees' working conditions, and is jointly liable for Plaintiff's damages.

68. The Defendants' termination of the Plaintiff was in direct violation of 29 U.S.C. 215 (a) (3) and, as a direct result, Plaintiff has been damaged.

69. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAVID A. WALKER JR. respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;
- B. Enter judgment against Defendants ANNELLIE'S CAR WASH and RENE L. MORENO that Plaintiff DAVID A. WALKER JR. recovers compensatory, damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
- C. That Plaintiff recovers an award of reasonable attorney fees, costs, and expenses.
- D. Order the Defendants ANNELLIE'S CAR WASH and RENE L. MORENO to make whole the Plaintiff by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;
- E. Plaintiff DAVID A. WALKER JR. further prays for such additional relief as the interests of justice may require.

JURY DEMAND

Plaintiff DAVID A. WALKER JR. demands trial by jury of all issues triable as of right by jury.

Dated: December 28, 2017

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.

Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
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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 THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

DAVID A. WALKER JR.

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500, Miami, FL 33156
Tel: (305) 446-1500

DEFENDANTS

ANNELLIE'S CAR WASH LLC
and RENE L. MORENO, individually,

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT 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
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 PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, 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- (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case YES NO b) Related Cases YES NO
(See instructions second page): 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.
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: JURY DEMAND: Yes No

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

SIGNATURE OF ATTORNEY OF RECORD /s/ Zandro E. Palma, Esq.

DATE December 28, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

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: [Anellie's Car Wash Failed to Pay Minimum Wages, Lawsuit Claims](#)
