

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

ERNEST BORRERO,
JAVIER PEREZ,
and other similarly-situated individuals,

Plaintiffs,

v.

AAA TOWING & RECOVERY, LLC,
d/b/a M.I.A. TOWING & RECOVERY,
and EDWIN RODRIGUEZ, individually

Defendants,

COMPLAINT

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

COMES NOW the Plaintiffs ERNEST BORRERO, JAVIER PEREZ, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sue Defendants AAA TOWING & RECOVERY, LLC, d/b/a M.I.A. TOWING & RECOVERY, and EDWIN RODRIGUEZ, individually and alleges:

JURISDICTION VENUES AND PARTIES

1. This is an action to recover money damages for unpaid minimum wages, overtime wages, and retaliation 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. Plaintiffs ERNEST BORRERO, and JAVIER PEREZ are residents of Miami-Dade County, Plaintiff are covered employee for purposes of the Act.

3. Defendant AAA TOWING & RECOVERY, LLC, d/b/a M.I.A. TOWING & RECOVERY (hereinafter AAA TOWING, or Defendant) is a Florida corporation, having a place of business in Miami-Dade County, Florida, where Plaintiff worked for Defendant, and at all times material hereto, Defendant was engaged in interstate commerce.
4. The individual Defendant EDWIN RODRIGUEZ was and is now, the owner/partner and manager of Defendant Corporation AAA TOWING.
5. All the actions raised in this complaint took place in Miami-Dade County Florida, within the jurisdiction of this Court.

GENERAL ALLEGATIONS

6. This cause of action is brought by Plaintiffs ERNEST BORRERO, and JAVIER PEREZ as a collective action to recover from Defendants minimum and 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 "FLA or the "ACT") on behalf of Plaintiffs, and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after January 2015, (the "material time") without being compensated minimum and overtime wages pursuant to the FLSA.
7. Defendant AAA TOWING is a towing company operating a 24/7 road side assistance in Miami-Dade, and Monroe County.
8. Defendant AAA TOWING and its owner EDWING RODRIGUEZ employed Plaintiffs ERNEST BORRERO, and JAVIER PEREZ as a tow truck drivers in 2016. Plaintiffs were hired at different dates, they worked different schedules, and they resigned from their positions at different date, but both Plaintiffs were subjected to the same illegal

employment practices of Defendants AAA TOWING and its owner EDWIN RODRIGUEZ.

Allegations pertaining to Plaintiff ERNEST BORRERO

9. Defendant AAA TOWING employed Plaintiff ERNEST BORRERO from approximately May 17, 2016, to December 25, 2016, or 32 weeks.
10. Plaintiff was hired as a non-exempt employee to perform non-exempt work as a tow-truck driver. Plaintiff was required to work six days per week, and Defendants promised to pay him 30% from every service performed by him.
11. However, Defendants never honored the agreement, and Plaintiff ended up working one week of five days, and the following week 7 days per week.
12. Plaintiff had a pre-set mandatory schedule. Plaintiff worked from 7:00 AM to 7:00 PM, 8:00 or 9:00 PM, depending on the time Plaintiff finished the last service assigned to him by the dispatcher. Plaintiff knew what time he would start working, but he never knew what time he would go home. Plaintiff worked an average of 13 hours daily.
13. Thus, in weeks that Plaintiff worked 5 days, he worked an average of 65 hour per week; in weeks that Plaintiff worked 7 days, he worked an average of 91 hours per week.
14. Defendant failed to pay Plaintiff 30% commissions and paid Plaintiff bi-weekly the fixed amount of \$300.00 per week, which represents an hourly rate of \$4.61 an hour in working weeks of 5 days; and \$3.30 an hour in weeks of 7 working days. Plaintiff earned well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.
15. Plaintiff complained about minimum, overtime wages and the promised 30% many times, and Defendant EDWIN RODRIGUEZ promised to pay him later, but he never did it.

16. Therefore, Defendants failed to pay Plaintiff minimum wages and overtime hours at the rate of time and one-half his regular, in violation of FLSA provisions.
17. Defendants did not keep any time-keeping method and did not keep track of the hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid with checks without paystubs providing any accounting for hours worked, classification, etc.
18. On or about December 25, 2017 Plaintiff resigned from his employment with Defendant to pursue better job opportunities. However, Defendant did not paid Plaintiff for his last week of employment.

Allegations Pertaining to Plaintiff JAVIER PEREZ

19. Defendant AAA TOWING employed Plaintiff ERNEST BORRERO from approximately February 15, 2016, to October 15, 2016, or 35 weeks.
20. Plaintiff was hired as a non-exempt employee to perform non-exempt work as a tow-truck driver. Plaintiff was required to work six days per week, and Defendants promised to pay him 30% from every service performed by him.
21. Plaintiff was required to leave his personal vehicle in the yard, and to return home driving the Company's towing truck. The reason for this arrangement was to have Plaintiff ready to take any towing service faster.
22. Plaintiff was hired to work six days per week, and Defendants promised to pay him 30% from every service performed by him.
23. Plaintiff worked 7 days per week the night shift. Plaintiff worked from Monday to Sunday from 7:00 PM to 7:00 AM (12 hours daily) which means 84 working hours weekly.
24. In addition, Plaintiff on daily basis worked additionally at least 3 extra hours every day with unexpected services, at any time of the day (7 x 3=21 additional hours). These hours

constitute additional working hours. This means that Plaintiff worked a total of 105 hours weekly.

25. Plaintiff was paid bi-weekly an average of \$300.00 weekly per week which represents an hourly rate of \$2.86 an hour, well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.
26. Defendants did not keep any time-keeping method and did not keep track of the hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid with checks without paystubs providing any accounting for hours worked, classification, etc.
27. Plaintiff complained about minimum, overtime wages and the promised 30% many times, and Defendant EDWIN RODRIGUEZ promised to pay him later, and never did it.
28. On or about October 15, 2016, Plaintiff resigned from his employment with Defendant to pursue better job opportunities. However, Defendant did not paid Plaintiff for his last week of employment.
29. Therefore, Defendants failed to pay Plaintiff minimum wages and overtime hours at the rate of time and one-half his regular, in violation of FLSA provisions.
30. Plaintiffs ERNEST BORRERO, and JAVIER PEREZ intend to recover minimum and overtime wages, liquidated damages, and any other relief as allowable by law.
31. 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 wages and overtime 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
AS PER PLAINTIFF ERNEST BORRERO**

32. Plaintiff ERNEST BORRERO re-adopts each and every factual allegation concerning to him, as stated in paragraphs 1-31 of this Complaint as if set out in full herein.

33. This action is brought by Plaintiff ERNEST BORRERO and those similarly-situated 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 (a) 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.

34. The employer AAA TOWING was 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). The defendant is a towing company and has more than two employees directly and recurrently engaged in interstate commerce. At all times pertinent to this Complaint, the Employer/Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida. Upon information and belief, the annual gross revenue of the

Employers/Defendant was at all times material hereto in excess of \$500,000 per annum.

By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.

35. Plaintiff was employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff, and other employees similarly situated regularly and recurrently participated in interstate commerce, by handling and working on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

36. Defendant AAA TOWING employed Plaintiff ERNEST BORRERO as a tow truck driver, from approximately May 17, 2016, to December 25, 2016, or 32 weeks.

37. During his time of employment Plaintiff worked weeks of 5 days, an average of 65 hours per week; and he worked weeks of 7 days with an average of 91 working hours per week.

38. Defendant paid Plaintiff bi-weekly the fixed amount of \$300.00 per week, which represents an hourly rate of \$4.61 an hour in working weeks of 5 days; and \$3.30 an hour in weeks of 7 working days. Plaintiff earned well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.

39. Therefore, Defendant failed to pay Plaintiff minimum wages according to the minimum wage provisions established in 29 U.S.C. §206.

40. 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 Defendants. Nevertheless, upon information and belief, Defendants did not maintain accurate and complete time records of hours worked by Plaintiff and other employees in the asserted class.

41. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

42. 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:

*Florida minimum wage is \$8.05, which is higher than Federal minimum wage. As per FLSA regulations the higher minimum wage applies. Please note that these are preliminary calculations that could be adjusted after proper discovery.

a. Total amount of alleged unpaid wages:

Ten Thousand Four Hundred Ninety-Three Dollars and 60/100 (\$10,493.60)

b. Calculation of such wages:

Total period of employment: 32 weeks

Total relevant weeks: 32

Paid weekly: \$300.00 weekly

1.- Minimum wages for 16 weeks of 5 working days

Total number of weeks: 16

Total number of hours worked: 65 hours

Paid \$300 weekly: \$300.00:65 hours worked=\$4.61 an hour

Florida minimum wage 2016: \$8.05

Florida minimum wage \$8.05-\$4.61 paid=\$3.44 minimum wage difference

\$3.44 difference x 65 hours weekly= \$223.60 weekly x 16 weeks=\$3,577.60

2.- Minimum wages for 16 weeks of 7 working days

Total number of weeks: 16

Total number of hours worked: 91 hours

Paid \$300 weekly: \$300.00:91 hours worked=\$3.30 an hour

Florida minimum wage 2016: \$8.05

Florida minimum wage \$8.05-\$3.30 paid=\$4.75 minimum wage difference

\$4.75 difference x 91 hours weekly= \$432.25 weekly x 16 weeks=\$6,916.00

c. Nature of wages:

This amount represents unpaid minimum wages at Florida minimum wage rate.

43. At all times material hereto, Defendant AAA TOWING failed to comply with title §§ 201-219 and 29 C.F.R. § 516.2, § 516.4, 531.52, and § 531.59 et seq. in that Plaintiff was not paid the required minimum wage as required by the FLSA.
44. At times mentioned, individual Defendant EDWIN RODRIGUEZ was and is now, the owner/partner and manager of AAA TOWING. Defendant EDWIN RODRIGUEZ was an 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)]. This individual acted directly in the interests of AAA TOWING in relation to its employees including Plaintiff and others similarly situated. Defendant EDWIN RODRIGUEZ had financial and operational control of the business, provided Plaintiff with his work schedule and is jointly liable for Plaintiff’s damages.
45. Defendants AAA TOWING and EDWIN RODRIGUEZ 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 and those similarly-situated these minimum wages since the commencement of Plaintiff and those similarly-situated employee’s employment with Defendants as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages. Defendants 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.
46. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.
47. Defendants AAA TOWING and EDWIN RODRIGUEZ willfully and intentionally refused to pay Plaintiff ERNEST BORRERO minimum wages as required by the law of the United

States as set forth above and remains owing Plaintiff these minimum wages since the commencement of Plaintiff's employment with Defendants or as set forth above.

48. 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 ERNEST BORRERO and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff ERNEST BORRERO and other similarly-situated and against the Defendants AAA TOWING and EDWIN RODRIGUEZ 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 unpaid minimum wages for hours worked in excess of forty weekly, 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 ERNEST BORRERO and those similarly-situated demand trial by jury of all issues triable as of right by jury.

**COUNT II:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME, AGAINST ALL DEFENDANTS;
AS TO PLAINTIFF ERNEST BORRERO**

49. Plaintiff ERNEST BORRERO re-adopts each and every factual allegation concerning to him, as stated in paragraphs 1-31 above as if set out in full herein.
50. This cause of action is brought by Plaintiff ERNEST BORRERO as a collective action to recover from Defendants overtime compensation, liquidated damages, costs and reasonable attorney's fees under the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT"), on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after May 2016, (the "material time") without being compensated "at a rate not less than one and a half times the regular rate at which he is employed."
51. The employer AAA TOWING was 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). The defendant is a towing company and has more than two employees directly and recurrently engaged in interstate commerce. At all times pertinent to this Complaint, the Employer/Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida. Upon information and belief, the annual gross revenue of the Employers/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.
52. Plaintiff was employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff, and other employees similarly situated regularly and recurrently participated in interstate commerce, by handling and working with goods and materials

that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

53. Defendant AAA TOWING employed Plaintiff ERNEST BORRERO as a tow truck driver, from approximately May 17, 2016, to December 25, 2016, or 32 weeks.

54. During his time of employment Plaintiff worked weeks of 5 days, an average of 65 hour per week; and weeks of 7 working days with an average of 91 working hours per week.

55. Defendant paid Plaintiff bi-weekly the fixed amount of \$300.00 per week, which represents an hourly rate of \$4.61 an hour in working weeks of 5 days; and \$3.30 an hour in weeks of 7 working days. Plaintiff earned well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.

56. Plaintiff worked in excess of 40 hours every week period. However, Plaintiff did not receive any additional compensation for overtime hours.

57. Therefore, Plaintiff was not paid for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).

58. Defendant did not keep any time-keeping method and did not keep track of the hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid with checks without paystubs providing any accounting for hours worked, classification, etc.

59. 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. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.

60. The records, if any, concerning the number of hours actually worked by Plaintiff and those similarly situated, 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 time records of hours worked by Plaintiff and other employees.

61. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

62. 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 overtime wages is as follows:

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

a. Total amount of alleged unpaid O/T wages:

Thirteen Thousand Two Hundred Thirty Dollars and 08/100 (\$13,230.08)

b. Calculation of such wages:

Total period of employment: 32 weeks

Total relevant weeks: 32

Paid weekly: \$300.00 weekly

1.- Overtime for 16 weeks of 5 working days/65 hours weekly

Total number of weeks: 16

Total number of hours worked: 65 hours

Total O/T hours: 25 O/T hours

Paid \$300 weekly: \$300.00:65 hours worked=\$4.61 an hour

Federal minimum wage of \$7.25 applies \$7.25 x 1.5=\$10.88 O/T rate

O/T rate: \$10.88

O/T rate \$10.88 x 25 hours O/T hours= \$272.00 weekly x 16 weeks=\$4,352.00

2.- Overtime for 16 weeks of 7 working days/91 hours weekly

Total number of weeks: 16

Total number of hours worked: 91 hours

Total number of O/T hours: 51 O/T hours

Paid \$300 weekly: \$300.00:91 hours worked=\$3.30 an hour

Federal minimum wage of \$7.25 applies \$7.25 x 1.5=\$10.88 O/T rate

O/T rate: \$10.88

O/T rate \$10.88 x 51 hours O/T hours= \$554.88 weekly x 16 weeks=\$8,878.08

Total 1 and 2: \$13,230.08

c. Nature of wages (e.g. overtime or straight time):

This amount represents unpaid overtime wages.

63. At all times material hereto, the Employer/Defendant failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.
64. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employee's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.
65. At times mentioned, individual Defendant EDWIN RODRIGUEZ was and is now, the owner/partner and manager of AAA TOWING. Defendant EDWIN RODRIGUEZ was an 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)]. This individual acted directly in the interests of AAA TOWING in relation to its employees including Plaintiff and others similarly situated. Defendant EDWIN RODRIGUEZ had financial and operational control of the business, provided Plaintiff with his work schedule and is jointly liable for Plaintiff's damages.
66. Defendants AAA TOWING and EDWING RODRIGUEZ willfully and intentionally refused to pay Plaintiff overtime wages at the rate of time and one-half his regular rate, as

required by the law of the United States and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendants as set forth above.

67. 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 ERNEST BORRERO and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff ERNEST BORRERO and other similarly-situated individuals and against the Defendants AAA TOWING and EDWING RODRIGUEZ on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff ERNEST BORRERO actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty weekly, 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 ERNEST BORRERO demands trial by jury of all issues triable as of right by jury.

COUNT III:
F.L.S.A. WAGE AND HOUR FEDERAL STATUTORY VIOLATION: FAILURE TO
PAY MINIMUM WAGE; AGAINST ALL DEFENDANTS
AS PER PLAINTIFF JAVIER PEREZ

68. Plaintiff JAVIER PEREZ re-adopts each and every factual allegation concerning to him, as stated in paragraphs 1-31 of this Complaint as if set out in full herein.

69. This action is brought by Plaintiff JAVIER PEREZ and those similarly-situated 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 (a) 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.

70. The employer AAA TOWING was 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). The defendant is a towing company and has more than two employees directly and recurrently engaged in interstate commerce. At all times pertinent to this Complaint, the Employer/Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida. Upon information and belief, the annual gross revenue of the Employers/Defendant was at all times material hereto in excess of \$500,000 per annum.

By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.

71. Plaintiff was employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff, and other employees similarly situated regularly and recurrently participated in interstate commerce, by handling and working on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

72. Defendant AAA TOWING employed Plaintiff JAVIER PEREZ as a tow truck driver, from approximately February 15, 2016, to October 15, 2016, or 35 weeks.

73. Plaintiff worked 7 days per week the night shift. Plaintiff worked from Monday to Sunday from 7:00 PM to 7:00 AM (12 hours daily) which means 84 working hours weekly.

74. In addition, Plaintiff on daily basis worked at least 3 extra hours every day with unexpected services, at any time of the day ($7 \times 3=21$ additional hours). This means that Plaintiff worked a total of 105 hours weekly.

75. Plaintiff was paid bi-weekly an average of \$300.00 weekly, which represents an hourly rate of \$2.86 an hour, well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.

76. Therefore, Defendant failed to pay Plaintiff minimum wages according to the minimum wage provisions established in 29 U.S.C. §206.

77. 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 Defendants. Nevertheless, upon information and belief,

Defendants did not maintain accurate and complete time records of hours worked by Plaintiff and other employees in the asserted class.

78. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

79. 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:

*Florida minimum wage is \$8.05, which is higher than Federal minimum wage. As per FLSA regulations the higher minimum wage applies. Please note that these are preliminary calculations that could be adjusted after proper discovery.

a. Total amount of alleged unpaid wages:

Nineteen Thousand Seventy-Three Dollars and 25/100 (\$19,073.25)

b. Calculation of such wages:

Total period of employment: 35 weeks

Total relevant weeks: 35

Paid weekly: \$300.00 weekly

Total number of hours worked: 105 hours

Paid \$300 weekly: \$300.00:105 hours worked=\$2.86 an hour

Florida minimum wage 2016: \$8.05

Florida minimum wage \$8.05-\$2.86 paid=\$5.19 minimum wage difference

\$5.19 difference x 105 hours weekly= \$544.95 weekly x 35 weeks=\$19,073.25

c. Nature of wages:

This amount represents unpaid minimum wages at Florida minimum wage rate.

80. At all times material hereto, Defendant AAA TOWING failed to comply with title §§ 201-219 and 29 C.F.R. § 516.2, § 516.4, 531.52, and § 531.59 et seq. in that Plaintiff was not paid the required minimum wage as required by the FLSA.

81. At times mentioned, individual Defendant EDWIN RODRIGUEZ was and is now, the owner/partner and manager of AAA TOWING. Defendant EDWIN RODRIGUEZ was an 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)]. This individual acted directly in the interests of AAA TOWING in relation to its employees including Plaintiff and others similarly situated. Defendant EDWIN RODRIGUEZ had financial and operational control of the business, provided Plaintiff with his work schedule and is jointly liable for Plaintiff’s damages.

82. Defendants AAA TOWING and EDWIN RODRIGUEZ 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 and those similarly-situated these minimum wages since the commencement of Plaintiff and those similarly-situated employee’s employment with Defendants as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages. Defendants 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.

83. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.

84. Defendants AAA TOWING and EDWIN RODRIGUEZ willfully and intentionally refused to pay Plaintiff JAVIER PEREZ minimum wages as required by the law of the United States as set forth above and remains owing Plaintiff these minimum wages since the commencement of Plaintiff’s employment with Defendants or as set forth above.

85. 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 JAVIER PEREZ and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff JAVIER PEREZ and other similarly-situated and against the Defendants AAA TOWING and EDWIN RODRIGUEZ 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 unpaid minimum wages for hours worked in excess of forty weekly, 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 JAVIER PEREZ and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT IV:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME, AGAINST ALL DEFENDANTS;
AS TO PLAINTIFF JAVIER PEREZ

- 86. Plaintiff JAVIER PEREZ re-adopts each and every factual allegation concerning to him, as stated in paragraphs 1-31 above as if set out in full herein.
- 87. This cause of action is brought by Plaintiff JAVIER PEREZ as a collective action to recover from Defendants overtime compensation, liquidated damages, costs and reasonable attorney's fees under the provisions of the Fair Labor Standards Act, as

amended, 29 U.S.C. § 201 *et seq* (the “FLA or the “ACT”), on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff (“the asserted class”) and who worked in excess of forty (40) hours during one or more weeks on or after February 2016, (the “material time”) without being compensated “at a rate not less than one and a half times the regular rate at which he is employed.”

88. The employer AAA TOWING was 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). The defendant is a towing company and has more than two employees directly and recurrently engaged in interstate commerce. At all times pertinent to this Complaint, the Employer/Defendant obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida. Upon information and belief, the annual gross revenue of the Employers/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant’s business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.

89. Plaintiff was employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff, and other employees similarly situated regularly and recurrently participated in interstate commerce, by handling and working with goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

90. Defendant AAA TOWING employed Plaintiff JAVIER PEREZ as a tow truck driver, from approximately February 15, 2016, to October 15, 2016, or 35 weeks.

91. During his employment with Defendant, Plaintiff worked 7 days per week the night shift. Plaintiff worked from Monday to Sunday from 7:00 PM to 7:00 AM (12 hours daily) which means 84 working hours weekly.
92. In addition, Plaintiff on daily basis worked at least 3 extra hours every day with unexpected services, at any time of the day ($7 \times 3=21$ additional hours). These hours constitute more overtime hours. This means that Plaintiff worked a total of 105 hours weekly.
93. Plaintiff was paid bi-weekly an average of \$300.00 weekly per week which represents an hourly rate of \$2.86 an hour, well below the Federal and State mandatory minimum wage of \$7.25 and \$8.05 respectively.
94. Plaintiff worked in excess of 40 hours every week period. However, Plaintiff did not receive any additional compensation for overtime hours.
95. Therefore, Plaintiff was not paid for overtime hours at the rate of time and one-half his regular rate for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
96. Defendant did not keep any time-keeping method and did not keep track of the hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid with checks without paystubs providing any accounting for hours worked, classification, etc.
97. 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. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.
98. The records, if any, concerning the number of hours actually worked by Plaintiff and those similarly situated, 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 time records of hours worked by Plaintiff and other employees.

99. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

100. 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 overtime wages is as follows:

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

a. Total amount of alleged unpaid O/T wages:

Twenty-Four Thousand Seven Hundred Fifty-Two Dollars and 96/100
(\$24,752.00)

b. Calculation of such wages:

Total period of employment: 35 weeks
Total relevant weeks: 35 weeks
Total number of hours worked: 105 hours
Total O/T hours: 65 O/T hours
Paid \$300 weekly: \$300.00:65 hours worked=\$4.61 an hour
Federal minimum wage of \$7.25 applies \$7.25 x 1.5=\$10.88 O/T rate
O/T rate: \$10.88

O/T rate \$10.88 x 65 hours O/T hours= \$707.20 weekly x 35 weeks=\$24,752.00

c. Nature of wages (e.g. overtime or straight time):

This amount represents unpaid overtime wages.

101. At all times material hereto, the Employer/Defendant failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.

102. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employee's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.

103. At times mentioned, individual Defendant EDWIN RODRIGUEZ was and is now, the owner/partner and manager of AAA TOWING. Defendant EDWIN RODRIGUEZ was an 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)]. This individual acted directly in the interests of AAA TOWING in relation to its employees including Plaintiff and others similarly situated. Defendant EDWIN RODRIGUEZ had financial and operational control of the business, provided Plaintiff with his work schedule and is jointly liable for Plaintiff's damages.

104. Defendants AAA TOWING and EDWING RODRIGUEZ willfully and intentionally refused to pay Plaintiff overtime wages at the rate of time and one-half his regular rate, as required by the law of the United States and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendants as set forth above.

105. 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 JAVIER PEREZ and those similarly-situated respectfully requests that

this Honorable Court:

- A. Enter judgment for Plaintiff JAVIER PEREZ and other similarly-situated individuals and against the Defendants AAA TOWING and EDWING RODRIGUEZ on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff JAVIER PEREZ actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty weekly, 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 JAVIER PEREZ demands trial by jury of all issues triable as of right by jury.

Dated: July 31, 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
Telephone: (305) 446-1500
Facsimile: (305) 446-1502
zep@thepalmalawgroup.com
Attorney for Plaintiffs

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 THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

ERNEST BORRERO, JAVIER PEREZ, and other similarly-situated individuals

(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

AAA TOWING & RECOVERY, LLC and EDWING RODRIGUEZ

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: [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)

- 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 Plaintiff (PTF) and Defendant (DEF) citizenship: 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 [X] NO b) Related Cases [] YES [X] 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:

[X] 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

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

DATE July 31, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

ERNEST BORRERO and JAVIER PEREZ)	
<i>Plaintiff</i>)	
v.)	Civil Action No.
AAA TOWING & RECOVERY, LLC and EDWIN RODRIGUEZ)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* AAA TOWING & RECOVERY, LLC through its Registered Agent:

MARADIAGA, LESBIA
6800 S.W. 40TH STREET, #244
MIAMI, FL 33155

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ERNEST BORRERO and
JAVIER PEREZ

Plaintiff

v.

AAA TOWING & RECOVERY, LLC and EDWIN
RODRIGUEZ

Defendant

)
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)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) EDWIN RODRIGUEZ

2950 SW 71 St Ave
Miami, FL 33155

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [AAA Towing & Recovery Booted with FLSA Lawsuit](#)
