

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

LUIS J. CARMENATES,
and other similarly-situated individuals,

Plaintiff (s),

v.

PABLO'S MACHINE SHOP & WELDING CORP,
and PABLO Z. CISNEROS, individually

Defendants,

COMPLAINT

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

COMES NOW the Plaintiff LUIS J. CARMENATES, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants PABLO'S MACHINE SHOP & WELDING CORP, and PABLO Z. CISNEROS, individually and alleges:

1. This is an action to recover money damages for unpaid half-time overtime 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 LUIS J. CARMENATES is a resident of Miami-Dade County, Florida, within the personal jurisdiction and venue of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.

3. Corporate Defendant PABLO'S MACHINE SHOP & WELDING CORP hereinafter PABLO'S MACHINE SHOP, or Defendant) is a for-profit corporation authorized to conduct business in the State of Florida, in Miami-Dade County, Florida, and within the jurisdiction of this Court. Defendant 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)]. Defendant PABLO'S MACHINE SHOP is engaged in interstate commerce within the meaning of the Fair Labor Standards Act.
4. The individual Defendant PABLO Z. CISNEROS is the owner and manager of Defendant Corporation PABLO'S MACHINE SHOP. The individual Defendant is the employer of Plaintiff within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], and is jointly liable for Plaintiff's damages
5. All the actions raised in this complaint took place in Dade County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. This cause of action is brought by Plaintiff as a collective action to recover from Defendants half-time 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"), and on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff ("the asserted class") who worked during one or more weeks on or after November 2017 (the "material time") without being properly compensated for overtime hours at the rate of time-and-a-half their regular rate, for all hours worked in excess of

- forty (40) hours per week, at any time from three years prior to the filing of this complaint and until a judgment is entered in this case .
7. Corporate Defendant PABLO'S MACHINE SHOP is a non-carrier, commercial garage, engaged in the business of maintaining and repairing motor vehicles owned and operated by motor carriers, and motor private carriers, or firms engaged in the leasing and renting of motor vehicles to carriers.
 8. Defendants PABLO'S MACHINE SHOP and PABLO Z. CISNEROS employed Plaintiff LUIS J. CARMENATES from approximately November 18, 2017 to July 20, 2018, or 35 weeks.
 9. Plaintiff was a full time non-exempt hourly employee, working 6 days per week more than 40 hours every week. Plaintiff was entitled to be paid for overtime hours as established by the Fair Labor Standards Act.
 10. Plaintiff was hired to work as a mechanic shop employee, at PABLO'S MACHINE SHOP located at 10925 NW South River DR, Medley, Florida 33178.
 11. Plaintiff had multiple duties such as mechanic helper, shop attendant, cleaning employee, etc. Plaintiff worked Plaintiff was paid \$10.00 an hour.
 12. While employed by Defendants, Plaintiff had an irregular schedule. Plaintiff worked 6 days per week, usually from Monday to Friday from 7:00 AM to 7:00 PM (12 hours daily), or until he completed his work assignment for the day. On Saturdays, Plaintiff worked from 7:00 AM until 12:00 PM (5 hours). During the relevant employment period, Plaintiff rarely worked 50 hours or less. Most of the time Plaintiff worked an average of 62.5 hours in a week period. Plaintiff has

- already deducted 2.5 hours corresponding to lunch time that he took from Monday to Friday (0.5 x 5 days=2.5 hours).
13. Plaintiff was employed as a “shop employee” performing the same or similar duties as that of those other similarly-situated “shop employees” who Plaintiff observed worked in excess of 40 hours per week without overtime compensation.
 14. Plaintiff, and other similarly-situated individuals, was compensated for all hours worked at his regular rate. Defendants did not compensated Plaintiff and other similarly situated individuals, for overtime hours.
 15. Therefore, Defendants willfully failed to pay Plaintiff overtime at the rate of time and a 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)).
 16. Plaintiff did not clock in and out, but Defendants were able to track the number of hours worked by Plaintiff and other similarly-situated individuals. Defendants should be in possession of time records.
 17. Plaintiff was paid weekly with company checks without any paystubs providing basic information such as number of days and hours worked, wage rate, hours paid, employment taxes withheld etc.
 18. Plaintiff is not in possession of time records, but he will provide a good faith estimate of the unpaid half-time overtime hours, based on his recollections. After proper discovery, Plaintiff will amend his Statement of Claim properly.
 19. On or about Julio 20, 2018 Plaintiff resigned from his employment at PABLO’S MACHINE SHOP to pursue better job opportunities.

20. Plaintiff LUIS J. CARMENATES intends to recover any unpaid regular hour, and half-time overtime for every overtime hour which was paid at his regular rate, liquidated 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 regular or 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:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION of 29 U.S.C. § 207 (a)
(1) FAILURE TO PAY OVERTIME

22. Plaintiff LUIS J. CARMENATES re-adopts each and every factual allegation as stated in paragraphs 1-21 above as if set out in full herein.

23. This action is brought by Plaintiff and those similarly-situated to recover from the Employers unpaid overtime compensation, 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. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."

24. The Employer PABLO'S MACHINE SHOP, at all times pertinent to this Complaint, was engaged in interstate commerce within the meaning of the FLSA, and as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s). The

Defendant is a commercial garage, engaged in the business of maintaining and repairing motor vehicles owned and operated by motor carriers, and motor private carriers, engaged in interstate commerce. Defendant had more than two employees recurrently engaged in commerce or in the production of goods or services for commerce. 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, and otherwise regularly engages in interstate commerce, particularly with respect to their employees. 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, and/or Plaintiff and those similarly-situated, by virtue of working in interstate commerce, otherwise satisfy the Act's requirements. Therefore, there is FLSA enterprise coverage.

25. The Plaintiff was employed by an enterprise engaged in interstate commerce. The Plaintiff's work for the Defendant likewise affects interstate commerce. Plaintiff was a commercial garage employee, and through his daily activities he regularly, provided services to business engaged in interstate commerce. In addition, Plaintiff handled, or otherwise worked on goods and/or materials that were moved across State lines at any time in the course of business. Therefore, there is FLSA individual coverage.

26. Defendants PABLO'S MACHINE SHOP and PABLO Z. CISNEROS employed Plaintiff LUIS J. CARMENATES from approximately November 18, 2017 to July 20, 2018, or 35 weeks.

27. Plaintiff was a full time non-exempt hourly employee, working 6 days per week more than 40 hours every week. Plaintiff was entitled to be paid for overtime hours as established by the Fair Labor Standards Act.
28. Plaintiff was hired to work as a mechanic shop employee, at PABLO'S MACHINE SHOP located at 10925 NW South River DR, Medley, Florida 33178.
29. Plaintiff had multiple duties such as mechanic helper, shop attendant, cleaning employee, etc. Plaintiff worked Plaintiff was paid \$10.00 an hour.
30. While employed by Defendants, Plaintiff had an irregular schedule. Plaintiff worked 6 days per week an average of 62.5 hours in a week period. Plaintiff has already deducted 2.5 hours corresponding to lunch time that he took from Monday to Friday (0.5 x 5 days=2.5 hours).
31. Plaintiff was employed as a "shop employee" performing the same or similar duties as that of those other similarly-situated "shop employees" who Plaintiff observed worked in excess of 40 hours per week without overtime compensation.
32. Plaintiff, and other similarly-situated individuals, was compensated for all hours worked at his regular rate. Defendants did not compensated Plaintiff and other similarly situated individuals, for overtime hours.
33. Therefore, Defendants willfully failed to pay Plaintiff overtime at the rate of time and a 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)).

34. Plaintiff did not clock in and out, but Defendants were able to track the number of hours worked by Plaintiff and other similarly-situated individuals. Defendants should be in possession of time records.
35. Plaintiff was paid weekly with company checks without any paystubs providing basic information such as number of days and hours worked, wage rate, hours paid, employment taxes withheld etc.
36. Plaintiff is not in possession of time records, but he will provide a good faith estimate of the unpaid half-time overtime hours, based on his recollections. After proper discovery, Plaintiff will amend his Statement of Claim properly.
37. The records concerning the number of hours actually worked by Plaintiff LUIS J. CARMENATES, and all other similarly-situated employees, and the compensation actually paid to such employees should be in the possession and custody of Defendants. However, upon information and belief, Defendants did not maintain accurate time records of hours worked by Plaintiff and other employees.
38. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.
39. 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 are subjected to modifications as discovery could dictate. After proper discovery, Plaintiff will adjust his calculations.

a. Total amount of alleged unpaid wages:

Three Thousand Nine Hundred Thirty-Seven Dollars and 50/100
(\$3,937.50)

b. Calculation of such wages:

Total number of relevant weeks: 35 weeks
Average hours worked weekly: 62.5 hours
Average overtime hours weekly: 22.5 O/T hours weekly
Regular rate: \$10.00 an hour x 1.5= \$15.00
O/T rate: \$15.00-\$10.00 O/T rate paid = \$5.00 half-time O/T

Half-time \$5.00 x 22.5 O/T hours=\$112.50 weekly x 35 weeks=\$3,937.50

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

This amount represents the unpaid half-time overtime.

40. At all times material hereto, the Employer/Defendant PABLO'S MACHINE SHOP failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 et seq. 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. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid time and one half of their regular rate of pay for all overtime hours and straight time hours worked in excess of forty.

41. Defendant PABLO'S MACHINE SHOP 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 remains 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.

42. At the times mentioned, individual Defendant PABLO Z. CISNEROS was, and is now, the owner/manager of Defendant Corporation PABLO'S MACHINE SHOP. The individual Defendant PABLO Z. CISNEROS had financial and operational control of PABLO'S MACHINE SHOP, provided Plaintiff with his work schedule, and he is jointly liable for Plaintiff's damages. Individual Defendant PABLO Z. CISNEROS was the employer of Plaintiff LUIS J. CARMENATES 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 interest of PABLO'S MACHINE SHOP in relation to its employees, including Plaintiff and others similarly situated.
43. Defendants PABLO'S MACHINE SHOP and PABLO Z. CISNEROS willfully and intentionally refused to pay Plaintiff overtime wages 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.
44. 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 LUIS J. CARMENATES and those similarly-situated individuals respectfully request that this Honorable Court:

- A. Enter judgment for Plaintiff LUIS J. CARMENATES and other similarly-situated and against the Defendants PABLO'S MACHINE SHOP and PABLO Z. CISNEROS, on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and

- B. Award Plaintiff actual damages in the amount shown to be due for unpaid half-time 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 LUIS J. CARMENATES and those similarly-situated demand trial by jury of all issues triable as of right by jury.

Dated: This 29th day of August 2018.

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
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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 NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS LUIS J. CARMENATES DEFENDANTS PABLO'S MACHINE SHOP & WELDING CORP, and PABLO Z. CISNEROS, 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) The Law Office of Zandro E. Palma, P.A. 9100 S. Dadeland Blvd., Ste 1500, Miami, FL 33156 (305-446-1500) 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) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Med. Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education TORTS 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence Other: 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions BANKRUPTCY 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC 7609 OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC 3729 (a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State 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 Transfer 7 Appeal to District Judge from Magistrate Judgment 8 Multidistrict Litigation - Direct File 9 Reremanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] 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

VIII. REQUESTED IN COMPLAINT: LENGTH OF TRIAL via days estimated (for both sides to try entire case)

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 DATE August 29, 2018 SIGNATURE OF ATTORNEY OF RECORD Zandro E. Palma, Esq.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LUIS J. CARMENATES

Plaintiff

v.

PABLO'S MACHINE SHOP & WELDING CORP,
and PABLO Z. CISNEROS, individually

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PABLO Z. CISNEROS

10925 NW SOUTH RIVER DR
MEDLEY, FL 33178

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: [Pablo's Machine Shop & Welding Corp Facing Unpaid Overtime Suit](#)
