

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

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

Plaintiff,

v.

WOODGRAIN MILLWORK, INC. a
Idaho corporation,

Defendant.

COMPLAINT

Plaintiff, George Cuik (“Cuik”), on behalf of himself and all others similarly situated under the provisions of the Fair Labor Standard Act (“FLSA”) of 1938, as amended, 29 U.S.C. § 216(b), files this Complaint against Defendant, Woodgrain Millwork, Inc. (“Woodgrain”), and alleges, as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has subject matter jurisdiction over Plaintiffs’ federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343(4), because these claims seek redress for violations of Plaintiffs’ federal civil and statutory rights.
2. At all material times, Woodgrain is an Idaho corporation, authorized to conduct and conducting business in Florida.
3. At all material times, Plaintiff is *sui juris* and a resident of Miami-Dade County, Florida.
4. Defendant is an employer within the meaning of the Fair Labor Standards Act (“FLSA”)

and Florida common law.

5. Plaintiff is a non-exempt employee within the meaning of the FLSA law and was/is entitled to overtime wages pursuant to the FLSA and Florida common law.

6. Venue is proper because the Plaintiff resides in, is employed in and the allegations that form the basis of this Complaint occurred in Miami-Dade County, Florida.

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

GENERAL ALLEGATIONS

8. Upon information and belief, Woodgrain is the FLSA employer for Plaintiff's employment.

9. Upon information and belief, the annual gross revenue of Woodgrain is/was at all material times in excess of \$500,000.00 per annum.

10. At all material times, Woodgrain was and continues to be an enterprise engaged in interstate commerce.

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

12. As a result of the services provided by Woodgrain, two or more of its employees

regularly handled and worked with goods and materials moved in or produced in interstate commerce.

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

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

15. Plaintiff was employed by Millwork as a non-exempt field service representative, approximately from 1998 through the present (“relevant time period”).

16. Throughout his employment with Woodgrain, Plaintiff worked in excess of forty (40) hours per week for Woodgrain.

17. Notwithstanding, Woodgrain willfully and intentionally failed/refused to pay to Plaintiff the required overtime rate of time and one half, as required by the FLSA.

18. Woodgrain knew of the overtime requirements of the FLSA and intentionally failed to investigate whether their payroll practices were in accordance with the Fair Labor Standards Act.

19. As a result, Plaintiff has suffered damages and is entitled to receive his lost wages, including his overtime compensation.

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

21. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorney’s fee.

PRE-SUIT DEMAND

22. On February 3, 2017, Plaintiff through the undersigned counsel, sent to the Defendant a

written pre-suit demand regarding the violations of the overtime provisions of the FLSA, and requesting Employer pay the amounts owed to Plaintiff, but Employer failed/refused to do so or respond to same (“Demand”). A copy of the Demand is attached as “**Exhibit A**”.

COUNT I -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA

23. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-three (23) above.

24. This case is brought by Plaintiff, on behalf of himself and all others similarly situated, as a collective action against Woodgrain for overtime compensation pursuant to 29 U.S.C. § 216(B).

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

26. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).

27. 29 U.S.C. § 207 (a)(1) states “if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty (40) at the rate of at least one and one half times the employee’s regular rate...”

28. Woodgrain’s business activities involve those to which the FLSA applies. Both the Defendant’s business and the Plaintiff’s work for Defendant affected interstate commerce for the relevant time period. Plaintiff’s work for Woodgrain affected interstate commerce for the relevant time period because the materials and goods that Plaintiff used on a constant and/or continual basis and/or that were supplied to him by Woodgrain to use on the job moved through

interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiff's work for the Defendant was actually in and/or so closely related to the movement of commerce while he worked for the Defendant that the FLSA applies to Plaintiff's work for Woodgrain.

29. Additionally, Woodgrain regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, thus making Defendant's business an enterprise covered under the FLSA.

30. Upon information and belief, Woodgrain had gross sales or business done in excess of \$500,000.00 annually for the relevant time period.

31. Upon information and belief, Woodgrain's gross sales or business is expected to exceed \$500,000.00 for the year 2017.

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

33. Plaintiff routinely worked in excess of forty (40) hours per week for Woodgrain throughout the relevant time period.

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

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

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

PLAINTIFF'S DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, George Cuik respectfully requests that judgment be entered in his favor against Defendant, Woodgrain Millwork, Inc., as follows:

- (a) Declaring pursuant to 28 U.S.C §2201 and §2202, that the acts and practices of the Defendant complained of herein are in violation of the overtime wage provisions of the FLSA;
- (b) Permanently enjoining the Defendant, their agents, officers and employees from engaging in all practices found by this court to be in violation of the overtime wage provisions of the FLSA;
- (c) Awarding Plaintiff damages against Defendant, for lost and withheld compensation, and overtime compensation for all hours that he worked for Defendant over forty (40) hours per week, but for which he was not compensated at the required overtime rate;
- (d) Awarding Plaintiff liquidated damages;
- (e) Awarding Plaintiff reasonable attorney's fees, costs, interest, and expenses of this litigation pursuant to 29 U.S.C. §216(b); and Section 448.08, of the Florida Statutes.
- (f) Ordering any other further relief that this Court may deem just and proper.

Respectfully submitted this 17th day of March, 2017.

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

ESPINO LAW
Attorney for Plaintiff
2250 SW 3rd Avenue, 4th Floor
Miami, Florida 33129
Telephone: (305) 704-3172
Facsimile: (305) 722-7378
E-mail: me@espino-law.com

EXHIBIT A

ESPINO LAW

February 3, 2017

Sent via Certified Mail/Return-Receipt

Woodgrain Millwork
c/o Kishore Ramsawak, its Registered Agent
1910 SW Exeter Court
Port St. Lucie, FL 34953

RE: George Cuik ("Cuik") v. Woodgrain Millwork ("Woodgrain")

FOR SETTLEMENT PURPOSES ONLY

Dear Kishore Ramsawak:

Please be advised that the undersigned represents Mr. Cuik in connection with the overtime issue stemming from his employment with Woodgrain Millwork ("Woodgrain").

Mr. Cuik has been working as a service representative for Woodgrain from approximately 1988. Throughout his employment, Mr. Cuik regularly worked in excess of forty (40) hours per week. Notwithstanding, Woodgrain failed/refused to pay him the federally required wages for his hours worked in excess of forty (40) hours.

Moreover, pursuant to Fair Labor Standards Act ("FLSA"), employers must pay employees overtime pay for hours worked in excess of forty (40) hours in a workweek of at least one and one-half times (1½) their regular rates of pay. In addition, Mr. Cuik's position does not fall under any of the exemptions that would allow Woodgrain not to pay overtime. Therefore, Mr. Cuik is unequivocally entitled to overtime pay for all overtime hours worked each workweek during his time at Woodgrain, under both federal and state law.

Although you may claim Mr. Cuik is only entitled to half-time for overtime hours in excess of forty (40) hours, pursuant to the fluctuating workweek, your payroll practices violate the fluctuating workweek requirements. Therefore, my client is entitled to be paid at the lawful overtime rate of one and one half (1½) times his regular rate for any hours worked in excess of forty (40) hours per week for the entire three (3) year period under the FLSA.

Further, federal law requires all employers to keep records of the hours worked each day and each workweek by the employer for at least three (3) years. Therefore, we presume you have these records showing the hours worked by my client for and during the course of his employment with Woodgrain. Both federal and state law also provide for damages, penalties, and attorney's fees if an employee is not paid overtime as required by applicable law. If litigation were to commence, Mr. Cuik would be entitled to the following:

1. All unpaid overtime wages,

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

As a result, we are confident the Department of Labor ("DOL") will agree that Woodgrain's failure to pay Mr. Cuik overtime wages is unlawful. Moreover, after a full investigation, the DOL would require Woodgrain to compensate Mr. Cuik for the required damages, penalties, and attorney's fees if litigation ensued in court or if a formal complaint was filed. However, Mr. Cuik has not yet filed a formal complaint with DOL or a civil action in district court against Woodgrain. Mr. Cuik would prefer to resolve this matter amicably, without the need for litigation, and/or the filing of a formal complaint with the DOL, which may inevitably result in an on-site investigation of Woodgrain.

Based on the foregoing, at this time, my client demands the following: (1) overtime compensation for the applicable three (3) year period from today's letter, liquidated damages, and attorney's fees; and (2) lost wages, lost earnings, and benefits.

Please contact me within seven (7) days of this letter to let me know if you are willing to attempt to resolve these matters voluntarily. If I do not hear from you within (7) days of your receipt of this letter, my client has authorized me to proceed with all legal remedies available to him, which includes, lost wages, benefits, compensatory and punitive damages, and attorneys' fees and costs.

GOVERN YOURSELVES ACCORDINGLY.

Sincerely,

ESPINO LAW

A handwritten signature in black ink, appearing to read 'Monica Espino', with a long horizontal flourish extending to the right.

Monica Espino

cc: George Cuik

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

DEFENDANTS

WOODGRAIN MILLWORK, INC., a Idaho corporation

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

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

ESPINO LAW, MONICA ESPINO, ESQ., 2250 SW 3 AVENUE, 4th FLOOR, MIAMI, FLORIDA 33129, (305)704-3172

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 100 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (Specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §§201-216

Brief description of cause:
OVERTIME WAGE VIOLATIONS

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE: **5/17/17** SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT - AMOUNT APPLYING IFP JUDGE MAG. JUDG

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



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

Plaintiff(s)

v.

WOODGRAIN MILLWORK, INC., a Idaho corporation,)

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

WOODGRAIN MILLWORK, INC.
c/o PAUL WEST, IT'S REGISTERED AGENT
1450 SHEPARD STREET, #1
TITUSVILLE, FL 32780

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

ESPINO LAW
c/o MONICA ESPINO, ESQ.
2250 SW 3 AVENUE, 4th FLOOR
MIAMI, FL 33129

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*
was received by me on *(date)*

I personally served the summons on the individual at *(place)*
on *(date)* ; or

I left the summons at the individual's residence or usual place of abode with *(name)*
a person of suitable age and discretion who resides there,
on *(date)* , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* , who is
designated by law to accept service of process on behalf of *(name of organization)*
on *(date)* ; or

I returned the summons unexecuted because ; or

Other *(specify):*

My fees are \$ for travel and \$ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Woodgrain Millwork Hit with Unpaid Overtime Lawsuit](#)
