

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 JUN 20 PM 12:44
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

CHARLES M. FOX, on behalf of himself and others
similarly situated,

CASE NO.: 6:17-cv-1130-ORL-37KRS

Plaintiff,

v.

SERVICES, SUPPORTS AND SOLUTIONS, INC.,
a Florida Profit Corporation, and RICHARD P. STIER,
individually.

Defendants.

COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, CHARLES M. FOX ("Mr. Fox" or "Plaintiff"), on behalf of himself and others similarly situated, files this Complaint against Defendants, SERVICES, SUPPORTS AND SOLUTIONS INC. ("SSS"), and RICHARD P. STIER ("RS")(collectively "Defendants") and states as follows:

CLASS SOUGHT TO BE CERTIFIED

1. Plaintiff seeks to conditionally certify the following class of individuals: "Any and all hourly paid caretakers who worked for Defendants during the last three (3) years at any of Defendants' facilities whom: (a) were misclassified as independent contractors; (b) worked more than forty (40) hours per week; and (c) were not paid time and one half overtime compensation for all hours worked over forty (40) per workweek."

JURISDICTION

2. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the "FLSA") to

recover unpaid back wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney's fees and costs.

3. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

4. This Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-02.

PARTIES

5. At all times material hereto, Plaintiff was and continues to be a resident of Volusia County, Florida.

6. At all times material hereto, Defendants were, and continue to be a Florida company/individual who continue to be engaged in business in Florida, with their principal place of business in Volusia County, Florida.

7. Defendant, RS, resides in Volusia County, Florida, and is the owner and operator of SSS.

8. At all times material hereto, Plaintiff was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

9. At all times material hereto, Plaintiff was an "employee" of Defendants within the meaning of FLSA, but Defendants intentionally misclassified Plaintiff, and numerous others, as independent contractors, to avoid the requirements of the FLSA and other related tax and employment laws.

10. At all times material hereto, Defendants owned and operated their principal place of business in Volusia County, Florida.

11. At all times material hereto, Defendants were Plaintiff's "employer" within the meaning of FLSA.

12. At all times relevant to this Complaint, Defendant, RS maintained and exercised the authority to: (a) hire and fire and fire employees of SSS; (b) determine the rates of pay for employees of SSS; (c) set the schedules and working hours for employees of SSS; and (d) create the pay policies and procedures for employees of SSS. By virtue of the foregoing, RS is considered an employer as defined by the FLSA.

13. Defendant SSS was and continues to be an "employer" within the meaning of FLSA.

14. At all times material hereto, Defendants were, and continue to be, "enterprises engaged in commerce," within the meaning of FLSA.

15. Specifically, Defendants had two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

16. At all times material hereto, Defendants accepted and processed payments from their customers and others, which were drawn on out-of-state bank accounts.

17. Based upon information and belief, the annual gross revenue of Defendants was in excess of \$500,000.00 per annum during the relevant time periods.

18. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendants.

STATEMENT OF FACTS

19. From April 1, 2012, through current, Plaintiff was an hourly paid employee of Defendants, and performed caretaker and other services in Defendants' facility.

20. Defendants, however, in an effort to avoid the payment of overtime to Plaintiff, and others similarly situated, as well as to avoid compliance with various tax and other employment laws, purposefully misclassified Plaintiff and others similarly situated, as independent contractors.

21. At various material times hereto, Plaintiff, and others similarly situated, worked for Defendants in excess of forty (40) hours within a work week.

22. During Plaintiff's employ, Defendants failed to compensate Plaintiff at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty (40) hours in a single work week.

23. Instead, Defendants appear to have paid straight time for same, which is illegal.

24. Plaintiff, and other similarly situated employees, should be, and should have been, compensated at the rate of one and one-half times their regular rate for those hours that they worked in excess of forty (40) hours per week, as required by the FLSA.

25. Defendants have violated Title 29 U.S.C. §§ 206 and 207 from June 8, 2014, through current in that:

- a. Plaintiff, and others similarly situated, worked in excess of forty (40) hours per week during their employment with Defendants;
- b. No payments or provisions for payment have been made by Defendants to properly compensate Plaintiff, and others similarly situated, at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours per work week, as provided by the FLSA; and

- c. Defendants failed to maintain proper pay and time records as mandated by the FLSA.

26. Plaintiff has retained the law firm of CELLER LEGAL, P.A. to represent him, and others similarly situated, in the litigation and has agreed to pay the firm a reasonable fee for its services.

COUNT I
VIOLATION OF 29 U.S.C. §207 OVERTIME COMPENSATION

27. Plaintiff re-alleges and reavers paragraphs 1 through 26 of the Complaint, as if fully set forth herein.

28. From at least June 8, 2014, and continuing currently, Plaintiff, and others similarly situated, work/worked in excess of the forty (40) hours per week for which they were not compensated at the statutory rate of one and one-half times their regular rate of pay.

29. Plaintiff, and others similarly situated, were entitled to be paid at the statutory rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours.

30. At all times material hereto, Defendants failed and continue to fail to maintain proper pay and time records as mandated by the FLSA.

31. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by their failure to compensate Plaintiff, and others similarly situated, at a rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours per week when they knew, or should have known, such was, and is due.

32. Defendants failed to properly disclose or apprise Plaintiff, or others similarly

situated, of their rights under the FLSA, and purposefully misclassified them as independent contractors when the true nature of their relationship with Defendants was that of employees.

33. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff, and others similarly situated, suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

34. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

COUNT II
DECLARATORY RELIEF

35. Plaintiff adopts all allegations in paragraphs 1 through 34, above.

36. Plaintiff and Defendants have a Fair Labor Standards Act dispute pending, which the Court has jurisdiction to hear pursuant to 28 U.S.C. § 1331, as a federal question exists.

37. The Court, also, has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act. 28 U.S.C. §§ 2201-2202.

38. Plaintiff may obtain declaratory relief.

39. Defendants employed Plaintiff and others similarly situated.

40. Defendants misclassified Plaintiff and others similarly situated as independent contractors.

41. Defendants are joint employers, subject to the coverage of the FLSA.

42. Defendants failed to properly pay Plaintiff, and others similarly situated, for all overtime hours worked.

43. Defendants failed to pay Plaintiff in a timely fashion, as required by the FLSA.

44. Defendants did not keep accurate time records pursuant to 29 U.S.C. § 211(c) and

29 C.F.R. Part 516.

45. Defendants failed to take affirmative steps to support a good faith defense.

46. Plaintiff, and others similarly situated, are entitled to liquidated damages.

47. It is in the public interest to have these declarations of rights recorded.

48. Plaintiff's declaratory judgment action serves the useful purpose of clarifying and settling the legal relations in issue.

49. The declaratory judgment action terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendants:

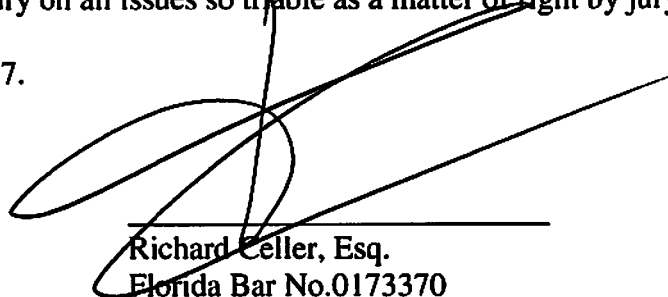
- a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiff the declaratory relief sought herein;
- c. Conditionally certifying a class of similarly situated individuals.
- d. Awarding the certified class overtime compensation in the amount due to them for time worked in excess of forty (40) hours per work week;
- e. Awarding the certified class liquidated damages in an amount equal to the overtime award;
- f. Awarding the certified class reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- g. Awarding the certified class pre-judgment interest;

h. Ordering any other further relief the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

Dated: June 13, 2017.

A large, stylized handwritten signature in black ink, appearing to read 'Richard Celler', is written over a horizontal line.

Richard Celler, Esq.

Florida Bar No.0173370

Noah E. Storch, Esq.

Florida Bar No. 0085476

RICHARD CELLER LEGAL, P.A.

7450 Griffin Road, Suite 230

Davie, Florida 33314

Telephone: (866) 344-9243

Facsimile: (954) 337-2771

E-mail:

richard@floridaovertimelawyer.com

E-mail:

noah@floridaovertimelawyer.com

Attorney for Plaintiff

JS 44 (Rev. 12/12)

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

CHARLES M. FOX, on behalf of himself and others
similarly situated,

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

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

Richard Celler Legal, P.A., 7450 Griffin Road, Suite 230, Davie, FL
33314 Tel: (866) 344-9243

DEFENDANTS

SERVICES, SUPPORTS AND SOLUTIONS, INC.,
a Florida Profit Corporation, and RICHARD P. STIER,

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

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

Attorneys (If Known)

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

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

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

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

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

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|--|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <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 (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) 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"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §201, et seq., hereinafter called the "FLSA"
 Brief description of cause:

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

06/08/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CHARLES M. FOX, on behalf of himself and others
similarly situated,

CASE NO. 6:17-cv-1130-ORL-37KRS

Plaintiff,

v.

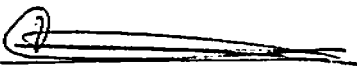
SERVICES, SUPPORTS AND SOLUTIONS, INC.,
a Florida Profit Corporation, and RICHARD P. STIER,
individually.

Defendants.

CONSENT TO BECOME PARTY PLAINTIFF

I, CHARLES M. FOX, consent to become the party plaintiff in the above-styled
Lawsuit.

Date: June 8, 2017

Signature: 

Print: Charles Fox

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Services, Supports and Solutions Hit with Unpaid OT Suit](#)
