

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

MARTA A. MARTINEZ
and other similarly-situated individuals,

Plaintiff (s),

v.

AK BUILDING SERVICES INC.
and ANA CASTANO, individually

Defendants,

_____ /

COMPLAINT

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

COMES NOW the Plaintiff MARTA A. MARTINEZ, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants AK BUILDING SERVICES INC. and ANA CASTANO, individually, and alleges:

JURISDICTION VENUES AND PARTIES

1. This is an action to recover money damages for off-the clock unpaid regular hours 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 MARTA A. MARTINEZ is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant AK BUILDING SERVICES INC. (hereinafter AK BUILDING SERVICES, or Defendant) is a Florida profit corporation. Defendant has 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 ANA CASTANO was and is now, the manager of AK BUILDING SERVICES. This individual 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)].
5. All the action raised in this complaint took place in Dade County Florida, within the jurisdiction of this Court.

GENERAL ALLEGATIONS

6. This cause of action is brought by Plaintiff MARTA A. MARTINEZ to recover from Defendants regular wages, 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").
7. Corporate Defendant AK BUILDING SERVICES provides janitorial and maintenance services for office buildings, condominiums, medical facilities schools and different commercial accounts throughout Dade County, Broward, Palm Beach, and other areas within Florida.
8. Defendants AK BUILDING SERVICES and ANA CASTANO employed Plaintiff MARTA A. MARTINEZ from approximately October 15, 2017, to April 9, 2018, or 25 weeks.
9. Plaintiff was hired as a non-exempt hourly employee. Plaintiff was a cleaning employee, and she was paid a wage rate of \$9.00 an hour.

10. Plaintiff worked at the office building located at 2999 NE 191 ST, Aventura Florida 33180, performing general office cleaning.
11. During the relevant period of employment with Defendants, Plaintiff worked a regular schedule; Plaintiff worked a minimum of 5 days per week, usually from Monday to Fridays. Plaintiff official schedule was from 5:30 PM, to 10:00 PM (4.5 hours each day) or 22.5 weekly. Sometimes Plaintiff worked a few more hours, but she never worked more than 40 hours in a week period. Plaintiff was not able to take bona fide lunch breaks.
12. Plaintiff clocked in and out by telephone. Plaintiff was paid bi-weekly with checks and paystubs reflecting less than 40 hours every week period.
13. Nevertheless, Plaintiff was not paid for 12.5 hours that Plaintiff worked off- the clock every week.
14. In order to complete her work assignment every day, Plaintiff began to work at 3:00 PM, but she did not clock-in until 5:30 PM, as required by her schedule. Plaintiff's supervisor required Plaintiff to complete her cleaning work every day, however, she was unable to finish her work in 4.5 hours. Plaintiff's supervisor, ANA CASTANO knew that Plaintiff was working 2.5 off the clock every day. These off the clock hours which were produced every day from 3:00 PM to 5:30, resulted in a minimum of 12.5 unpaid regular hours every week.
15. During the relevant period of employment, or 25 weeks, Plaintiff worked at least 12.5 overtime hours in every week period that were not compensated at any rate, not even at the minimum wage rate.
16. Therefore, Plaintiff was not paid her regular wages for all the hours that she worked in a week period, in violation of FLSA provisions.

17. Plaintiff was fired on or about April 9, 2018 due to discriminatory reasons, and she is in the process of filing her charge of discrimination with the Equal Employment Opportunity commission (EEOC).
18. Plaintiff MARTA A. MARTINEZ seeks to recover any unpaid regular wages, and any other relief as allowable by law.
19. Plaintiff is also claiming to be paid wages for the amount of \$250.00, which Defendants improperly retained as a security deposit.
20. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendants who are and who were subject to the unlawful payroll practices and procedures of Defendants and were not paid minimum and overtime wages at the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:

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

21. Plaintiff MARTA A. MARTINEZ re-adopts each and every factual allegation as stated in paragraphs 1-20 of this complaint as if set out in full herein.
22. Defendant AK BUILDING SERVICES was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) (1)(A). The Defendant is a janitorial and maintenance company providing cleaning services to commercial accounts engaged in interstate commerce, across Florida State and, through its business activities, affects interstate commerce. Defendant has more than two employees recurrently engaged in commerce or in the production of goods or services for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept

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

23. Plaintiff and those similarly-situated were employed by an enterprise engaged in interstate commerce. Particularly, Plaintiff was a cleaning employee, and through her daily activities, Plaintiff maintained in sanitary conditions businesses engaged in interstate commerce. Therefore, there is FLSA individual coverage.

24. This action is brought by Plaintiff to recover from the Employer unpaid minimum wages, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. §206. U.S.C. §206 states "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

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

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

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

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

25. Defendants AK BUILDING SERVICES and ANA CASTANO employed Plaintiff MARTA A. MARTINEZ from approximately October 15, 2017, to April 9, 2018, or 25 weeks.

26. Plaintiff was hired as a non-exempt hourly employee. Plaintiff was a cleaning employee, and she was paid a wage rate of \$9.00 an hour.
27. Plaintiff worked at the office building located at 2999 NE 191 ST, Aventura Florida 33180, performing general office cleaning.
28. During the relevant period of employment with Defendants, Plaintiff worked a regular schedule; Plaintiff worked a minimum of 5 days per week, usually from Monday to Fridays. Plaintiff official schedule was from 5:30 PM, to 10:00 PM (4.5 hours each day) or 22.5 weekly. Plaintiff was not able to take bona fide lunch breaks.
29. Plaintiff clocked in and out by telephone. Plaintiff was paid bi-weekly with checks and paystubs reflecting less than 40 hours every week period.
30. Nevertheless, Plaintiff was not paid for 12.5 hours that Plaintiff worked off- the clock every week.
31. In order to complete her work assignments every day, Plaintiff began to work at 3:00 PM, but she did not clock-in until 5:30 PM, as required by her schedule. Plaintiff's supervisor required Plaintiff to complete her cleaning work every day, however, she was unable to finish her work in 4.5 hours. Plaintiff's supervisor knew that Plaintiff was working 2.5 off the clock every day. These off the clock hours which were produced every day from 3:00 PM to 5:30, resulted in a minimum of 12.5 unpaid regular hours every week.
32. During the relevant period of employment, or 25 weeks, Plaintiff worked at least 12.5 overtime hours in every week period that were not compensated at any rate, not even at the minimum wage rate.
33. Therefore, Plaintiff was not paid her regular wages for all the hours that she worked in a week period, in violation of FLSA provisions.

34. 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. However, upon information and belief, Defendants did not maintain accurate and complete time records of hours worked by Plaintiff.

35. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.

36. 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 this are preliminary calculations, which will be adjusted after proper discovery.

*Florida minimum wage is higher than the Federal minimum wage. As per FLSA regulations the higher minimum wage applies.

a. Total amount of alleged unpaid wages:

Two Thousand Five Hundred Seventy-Eight Dollars and 00/100 (\$2,578.00)

b. Calculation of such wages:

Total relevant weeks of employment: 25 weeks

Total of weeks with unpaid off the clock hours: 25 weeks

Total off the clock hours worked: 12.5 off-the clock hours per week

Regular rate: \$9.00 an hour

Florida minimum wage rate 2018: \$8.25

$\$8.25 \times 12.5 \text{ off-the clock hours weekly} = \$103.12 \text{ weekly} \times 25 \text{ weeks} = \$2,578.00$

c. Nature of wages:

This amount represents unpaid off-the clock unpaid regular wages at Florida minimum wage rates.

37. Defendants AK BUILDING SERVICES and ANA CASTANO unlawfully failed to pay minimum wages to Plaintiff. Plaintiff seeks to recover any unpaid wages accumulated during the relevant employment period.

38. Defendants knew and/or showed reckless disregard of the provisions of the Act concerning the payment of minimum wages as required by the Fair Labor Standards Act and remains owing Plaintiff these minimum wages.
39. 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. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.
40. At the times mentioned, individual Defendant ANA CASTANO was and is now, the manager of AK BUILDING SERVICES. Defendant ANA CASTANO was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)]. In that, this individual Defendant acted directly in the interests of AK BUILDING SERVICES in relation to its employees including Plaintiff and others similarly situated. Defendant ANA CASTANO had financial and operational control of the businesses, determined Plaintiff’s terms and working conditions, and he is jointly liable for Plaintiff’s damages.
41. Defendants AK BUILDING SERVICES and ANA CASTANO willfully and intentionally refused to pay Plaintiff minimum wages as required by the law of the United States and remain owing Plaintiff these minimum wages as set forth above.
42. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorneys’ fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MARTA A. MARTINEZ respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff and against the Defendants AK BUILDING SERVICES and ANA CASTANO 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, 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 MARTA A. MARTINEZ and those similarly-situated demand trial by jury of all issues triable as of right by jury.

Dated: May 30, 2018

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@thepalmlawgroup.com
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 MARTA A. MARTINEZ

DEFENDANTS AK BUILDING SERVICES INC. and ANA CASTANO

(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)

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

(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)

- [X] 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)

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

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

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- [X] 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 Remanded 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: 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

VII. CAUSE OF ACTION LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE: May 30, 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

MARTA A. MARTINEZ

Plaintiff

v.

AK BUILDING SERVICES INC.
and ANA CASTANO

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AK BUILDING SERVICES INC.through its Registered Agent:

Cedar, Mark J., President
6600 GEORGIA AVENUE
#9
WEST PALM BEACH, FL 33405

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

MARTA A. MARTINEZ

Plaintiff

v.

AK BUILDING SERVICES INC.
and ANA CASTANO

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANA CASTANO

6600 GEORGIA AVENUE
#9
WEST PALM BEACH, FL 33405

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: [AK Building Services Hit with Lawsuit Over Alleged Unpaid Wages](#)
