

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

CASE NO.:

RAFAEL RODRIGUEZ-TELLEZ, and all others similarly
situated under 29 U.S.C 206(B),

Plaintiff,

v.

IRON CONTAINER, LLC, a Florida limited
liability company, and JOHN MARTORANA,
individually.

Defendants.

COMPLAINT

Plaintiff, Rafael Rodriguez-Tellez (“Rodriguez-”), 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 Defendants, Iron Container, LLC (“Iron Container”), and John Martotano (“Martorano”) (collectively referred to as the “Employer”) 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, Iron Container is a Florida limited liability company, authorized to conduct and conducting business in Miami-Dade County, Florida.
3. At all material times, Martorano is *sui juris* and a resident of Miami-Dade County,

Florida.

4. At all material times, Plaintiff is *sui juris* and a resident of Miami-Dade County, Florida.

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) as a substantial part of the events or omissions giving rise to the claims that occurred in this judicial district.

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

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

8. At all material times, the Employer was and continues to be an enterprise engaged in interstate commerce.

9. At all material times hereto, the Employer 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.

10. As a result of the services provided by the Employer, two or more of its employees regularly handled and worked with goods and materials moved in or produced in interstate commerce.

11. By reason of the foregoing, the Employer 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.

12. 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 in their world.

GENERAL ALLEGATIONS

13. Upon information and belief, Iron Container employed Plaintiff as a non-exempt laborer From approximately August, 2013 through approximately March, 2017.

14. Upon information and belief, John Martorano (“Martorano”) is an officer/director of Ikon and has economic control of Iron Container, and of the nature and structure of Plaintiff’s employment relationship with Iron Container.

15. At all material times, Iron Container’s gross annual revenues were in excess of \$500,000.00.

16. During his employment with Iron Container, Plaintiff regularly worked an average of forty-nine (49) hours per week, forty (40) regular hours and nine (9) overtime hours.

17. Notwithstanding, Employer willfully and intentionally failed/refused to pay to Plaintiff the federally required overtime rate for the overtime hours he worked.

18. Employer knew of the overtime requirements of the Fair Labor Standards Act and willfully/intentionally/recklessly 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 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 October 31, 2017, Plaintiff through the undersigned counsel, sent to the Employer 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
AGAINST IRON CONTAINER

23. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24) above.

24. This is a collective action against Iron Container for overtime compensation pursuant to 29 U.S.C. § 216(B).

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

26. Plaintiff routinely worked in excess of forty (40) hours per week for Iron Container. Specifically, Plaintiff estimates that he worked 9 hours of overtime per week for Iron Container, and was paid straight time compensation.

27. 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.

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

29. Iron Container 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).

30. At all material times, Iron Container 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.

31. At all material times, Iron Container failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

COUNT III -
VIOLATIONS OF THE OVERTIME PROVISIONS OF FLSA
AGAINST JOHN MARTORANO

32. Plaintiff re-alleges the allegations in paragraphs one (1) through twenty-four (24) above.

33. This is a collective action against Martorano for overtime compensation pursuant to 29 U.S.C. § 216(B).

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

35. Defendant, John Martorano, had operational control of Plaintiff and is therefore an employer pursuant to 29 U.S.C. § 203(d).

36. 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.

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

38. Martorano 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).

39. At all material times, Martorano 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.

40. At all material times, Martorano failed/refused to maintain proper time records as mandated by the FLSA regarding the overtime hours worked by Plaintiff.

PLAINTIFF'S DEMAND FOR JURY TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Rafael Rodriguez-Tellez respectfully requests that judgment be entered in his favor against Defendants, Iron Container, LLC, and John Martorano, as follows:

- (a) Declaring pursuant to 28 U.S.C §2201 and §2202, that the acts and practices of the Defendants complained of herein are in violation of the overtime wage provisions of the FLSA;
- (b) Permanently enjoining the Defendants, 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 Defendants, for lost and withheld compensation, and overtime compensation for all hours that he worked for Defendants 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 28th day of April, 2018.

Respectfully Submitted,

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

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EXHIBIT A

ESPINO LAW

October 31, 2017

Sent via Certified Mail/Return-Receipt

Iron Container, LLC
c/o Rodney Walters, its Registered Agent
3230 NW 42 Street
Miami, FL 33142

Re: *Rafael Rodriguez-Tellez ("Rodriguez") v. Iron Container, LLC ("Iron Container")*

FOR SETTLEMENT PURPOSES ONLY

To Whom It May Concern:

Please be advised that the undersigned represents Mr. Rodriguez in connection with the overtime issue stemming from his employment with Iron Container. This correspondence serves as Mr. Rodriguez's demand for payment of his unpaid wages, including but not limited to, regular and overtime wages for hours worked by him pursuant to the Fair Labor Standards Act ("FLSA").

Mr. Rodriguez was employed as a welder with Iron Container from approximately August, 2013 thru March, 2017. Throughout his employment, Mr. Rodriguez regularly worked in excess of forty (40) hours per week. Specifically, he worked for an average of forty-nine (49) hours per week, nine (9) hours in overtime. Notwithstanding, Iron Container failed/refused to pay him the federally required wages for his hours worked in excess of 40 hours.

Moreover, pursuant to 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 their regular rates of pay. In addition, Mr. Rodriguez's position does not fall under any of the exemptions that would allow Iron Container not to pay overtime. Therefore, Mr. Rodriguez is unequivocally entitled to overtime pay for all overtime hours worked each workweek during his time at Iron Container, under both federal and state law.

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 Iron Container. 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. Rodriguez would be entitled to the following:

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 Iron Container's failure to pay Mr. Rodriguez overtime wages is unlawful. Moreover, after a full investigation, the DOL would require Iron Container to compensate Mr. Rodriguez for the required damages, penalties, and attorney's fees if litigation ensued in court or if a formal complaint was filed. However, Mr. Rodriguez has not yet filed a formal complaint with DOL or a civil action in district court against Iron Container. Mr. Rodriguez 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 Iron Container.

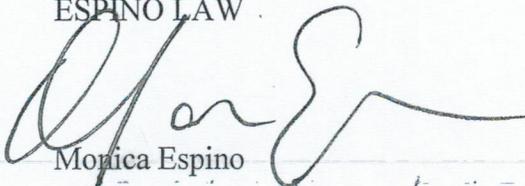
Based on the foregoing, at this time, my client demands the following: (1) overtime compensation for the applicable three (3) year period from today's letter, liquidated damages, and attorney's fees; and (2) lost wages, lost earnings, and benefits.

Please contact me within seven (7) days of this letter to let me know if you are willing to resolve this matter 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. Please note that should Mr. Rodriguez need to proceed to file a lawsuit, your exposure for attorney's fees rises exponentially.

GOVERN YOURSELVES ACCORDINGLY.

Sincerely,

ESPINO LAW



Monica Espino

cc: Rafael Rodriguez-Tellez

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Iron Container, Owner Named in Unpaid Overtime Complaint in Florida](#)
