

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2018 JUL 17 PM 3:49

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

VICTOR ROMERO on his own
behalf and others similarly situated,

Plaintiff,

Case Number 8:18 cv 1723 T 23 JSS

v.

CASTRO CONSTRUCTIVE SOLUTIONS, INC.
and KD CONTRUCTION OF FLORIDA, INC.

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff, was an employee of Defendants, for profit corporations that are *joint employers* for the purpose of this case , and brings this action for unpaid wages, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201-216 (the “FLSA”). Plaintiff worked as an hourly worker for Defendants and performed related activities for Defendants in Hillsborough County, Florida. Plaintiff routinely worked overtime, but was not paid overtime for all of the hours that he worked, at the correct rate of pay. Plaintiff was one of approximately 15-25 employees who performed manual construction related labor who are similarly situated to Plaintiff, for the benefit of Defendants, who were joint employers on at least one construction project(s) located in Tampa, Florida. Plaintiff was not a licensed subcontractor. Plaintiff did not supervise any subservient employees. Plaintiff worked for Defendants in Hillsborough

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County. The same is true for those similarly situated to Plaintiff, they were not licensed subcontractors nor were they supervisors. For the purpose of this action, Castro Constructive Solutions, Inc., and KD Construction of Florida Inc., are joint employers and KD Construction of Florida Inc., routinely directed and controlled the work of Plaintiff and those similarly situated.

2. Plaintiff's hours were routinely recorded by another party, associated with either or both of the named Defendants. These time sheets routinely reflected that overtime had been worked and Plaintiff had requested premium wages be paid with each submission of the time sheet on a weekly basis. The entirety of these pay records are believed to be in the exclusive custody, possession and/or control of Defendants.
3. For the four months preceding July 10, 2018, Plaintiff worked for Defendants and Plaintiff has not been paid for all of the hours Plaintiff worked for Defendants.
4. Notably, Plaintiff and those similarly situated performed their work at the same location in Tampa Florida, performing concrete related work for a large commercial construction project in downtown Tampa. Plaintiff was not working for two truly separate entities nor was any measure of the work for a different purpose, as KD Construction of Florida Inc., significantly controlled all material aspects of Plaintiff's employment as well as the employment of those similarly situated.
5. As of this date, Plaintiff has still not been paid the entirety of his overtime and regular hours and, as such, Plaintiff and those similarly situated have not been

compensated for the full extent of his damages and wage loss under the FLSA. Further, there are believed to be at least 15 to 25 or more similarly situated employees who were also not paid the full extent of their overtime and regular wages at the correct rate of pay and who were also subject to the exact same unlawful pay practices by these joint Defendants, who have not paid Plaintiff and those similarly situated for all of the hours that they worked.

6. Plaintiff seeks full compensation, including liquidated damages because Defendant's conduct in directing him to work off the clock and/or without pay and also failing to pay Plaintiff and those similarly situated at less than time and a half, which was a blatantly intentional and calculated attempt to extract more additional work out of Plaintiff for the benefit of Defendants, at the expense of Plaintiff, who was being paid less than premium wages (and in some cases, not paid at all) under the FLSA.
8. Defendant, Castro Constructive Solutions, Inc., is a Texas based, for profit company that sources laborers for general contractors, including, in this case Defendant KD Construction of Florida Inc., which is a domestic for profit corporation that operates and conducts business in, among others, Hillsborough and other counties, in the State of Florida, and is therefore, within the jurisdiction of the Court.
9. Defendants, at all relevant times to this complaint, was Plaintiff's employer as defined by 29 U.S.C. § 203(d). Plaintiff performed duties and responsibilities that involved commerce and/or the production of goods for commerce. This would include using materials and other resources that do not originate within

the State of Florida to construct commercial facility in downtown Tampa, Florida.

10. This action is brought under the FLSA to recover from Defendants, unpaid wages in the form of overtime wages, liquidated damages, and reasonable attorneys' fees and costs. This action is intended to include each and every hourly employee who worked for the Defendants at any time within the past three (3) years.
11. The Court has jurisdiction over Plaintiff's claims as all material events transpired in Hillsborough County, Florida, including those brought pursuant to 28 U.S.C. § 1337 and the FLSA.
12. At all material times relevant to this action, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203(s). Upon information and belief, including Plaintiff's experience with Defendants as well as the sheer size of Defendants' organization suggest that the Defendants are a multi-million dollar operation that have considerable expertise in the commercial construction. Accordingly, Plaintiff alleges that enterprise coverage is present in this case because Defendants each have an annual volume of at least \$500,000.00 in revenue and have two or more employees that handle goods in commerce, including dry wall, nails, tools, concrete, wire and all manner of construction materials and supplies, whom also use telephones, fax machines and other instrumentalities of commerce.
13. At all material times relevant to this action, Plaintiff in his capacity as an employee was individually covered by the FLSA. This would include doing

hourly work as a laborer, without managerial responsibility utilizing the highways and byways of the State of Florida. Plaintiff did not bear supervisory responsibility for any other employees. Plaintiff did not direct the hiring and firing of any employees. Plaintiff did not participate in the creation of budgets or maintain the production of sales nor did Plaintiff plan or control the budget of the Defendants in any way. Plaintiff did not implement legal compliance measures. The same is true for each of Plaintiff's similarly situated co-workers.

14. At all times relevant to this action, Defendants failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff performed services for Defendants for which no provisions were made by Defendants to properly pay Plaintiff for all hours worked during his employment. Plaintiff worked over 40 hours per week for several weeks during his employment with Defendants, at the direction of Defendants, including KD Construction of Florida Inc. who had superintendents on the job site overseeing the construction and acting as immediate supervisors for Plaintiff as well as those similarly situated. At no point did Defendants challenge or deny the fact that overtime was worked and, at no time did Defendants suggest that Plaintiff was not entitled to premium wages nor did Defendants indicate that Plaintiff and those similarly situated were not entitled to be paid for the time they worked for Defendants. In addition, neither Defendant replied to a pre-suite request for payment of the wages. Thus, the off the clock work and/or unpaid hours that Plaintiff was directed to work was intentional and was designed to extract additional hours of labor out of Plaintiff for the benefit of the Defendants, who then refused to

pay Plaintiff and those similarly situated premium wages and, in some weeks, failing to pay Plaintiff and those similarly situated at all. Notably, Defendants are in exclusive possession of the *majority* of relevant records in this case, including payroll records and schedules and other documentation that might reasonably assist Plaintiff with providing even greater specificity regarding the precise weeks that Plaintiff worked more than 40 hours. Plaintiff alleges that he routinely worked in excess of 40 hours per week for Defendants, as well as those similarly situated employees.

15. Defendants failed, refused and/or neglected to keep accurate time records pursuant to 29 U.S.C. § 211(c) of Plaintiff's, and others similarly situated to his true hours of work. Defendants did not object to the legitimacy of the amount of hours worked by Plaintiff and sought by the named Plaintiff. The amount of wages owed to the named Plaintiff are reasonably believed to be between \$1,500.00 to \$3,500.00 or more if Plaintiff were to be paid overtime and his regular wages at the appropriate rate, not including liquidated damages.

COUNT I – RECOVERY OVERTIME WAGES COMPENSATION

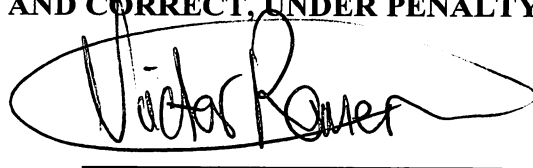
16. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-15, above.
17. Plaintiff, and those similarly situated to him, are/were entitled to be paid their regular rate of pay for each hour worked per work week as well as premium wages for those hours worked over forty hours and Plaintiff, as well as those similarly situated are entitled to be paid for each hour they worked for Defendants. During their employment with Defendants, Plaintiff, and those

similarly situated to him, regularly worked hours for each week in which they were not paid at the correct rate of pay. In Plaintiff's case, he routinely performed labor, at the specific request of Defendants for the sole benefit of Defendants, and was not paid at the correct rate of pay. Defendants' practice in this regard applied to all of the similarly situated persons referenced above.

18. As a result of Defendants intentional, willful, and unlawful acts in refusing to pay Plaintiff, and those similarly situated to him, their correct rate of pay for each hour worked per week in one or more work weeks, Plaintiff, and those similarly situated to him, have suffered damages plus incurring reasonable attorneys' fees and costs.
19. As a result of Defendants' willful violation of the FLSA, Plaintiff, and those similarly situated to him, are entitled to payment of the unpaid and overtime wages under, as well as liquidated damages under the FLSA.
20. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff demands judgment against Defendants, including, but not limited to, reimbursement of an amount equal to the loss of wages and liquidated damages, together with costs and attorney's fees pursuant to the FLSA, and such other further relief as this Court deems just and proper.

**I HEREBY AFFIRM THAT THE FACTUAL STATEMENTS MADE ABOVE
ARE TRUE AND CORRECT, UNDER PENALTY OF PERJURY**



Victor Romero

DATED this 17th day of July 2018,

s/W. John Gadd

W. John Gadd, Esq.

Fl Bar Number 463061

Bank of America Building

2727 Ulmerton Rd. Ste. 250

Clearwater, FL 33762

Tel – (727)524-6300

Email – wjg@mazgadd.com

JS 44 (Rev. 06/17)

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

VICTOR ROMERO and those similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
W. John Gadd, Esq., 2727 Uimerton Road, Suite 250, Clearwater, Florida 33762

DEFENDANTS

K.D. Construction of Florida, Inc., and Castro Constructive Solutions, Inc.

County of Residence of First Listed Defendant Miami-Dade and Texas
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)
Unknown

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 checked="" 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 checked="" 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)

Click here for: Nature of Suit Code Descriptions.

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 <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"/> 835 Patent - Abbreviated New Drug Application <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"/> 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"/> 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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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):
Section 201-216 of the Fair Labor Standards Act
 Brief description of cause:
Unpaid wages and overtime

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: 07/17/2018 SIGNATURE OF ATTORNEY OF RECORD: *W. John Gadd*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Castro Constructive Solutions, KD Construction of Florida Sued for Allegedly Unpaid Wages](#)
