

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

BYRON H. RUIZ,
NELSON R. BARILLAS,
and other similarly-situated individuals,

Plaintiffs,

v.

F. J. O'HARA & SONS INC.,
and GLEIBYS O'HARA, individually

Defendants.

COMPLAINT

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

COME NOW the Plaintiffs BYRON H. RUIZ, NELSON R. BARILLAS, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sue Defendants F. J. O'HARA & SONS INC., and GLEIBYS O'HARA, individually and allege:

1. This is an action to recover money damages for unpaid overtime wages 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. Plaintiffs BYRON H. RUIZ, and NELSON R. BARILLAS, are residents of Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiffs are covered employees for purposes of the Act.
3. Defendant F. J. O'HARA & SONS INC. (hereinafter F. J. O'HARA & SONS, or Defendant) is a foreign corporation, registered to do business in Florida. Defendant F. J. O'HARA & SONS has place of business in Miami-Dade County, Florida, where Plaintiffs

worked for the Defendant. At all times material hereto, Defendant was and is engaged in interstate commerce.

4. Individual Defendant GLEIBYS O'HARA was and is now, the owner/partner/director of Defendant Corporation F. J. O'HARA & SONS. Defendant GLEIBYS O'HARA is 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)],

GENERAL ALLEGATIONS

5. Defendant F.J. O'HARA & SONS is a distributor and logistics provider, specialized in the fish market. Defendant F.J. O'HARA & SONS provides full cold storage, warehousing, transportation and related services to companies engaged in interstate commerce. Defendant operates the facility at 2900 NW 75 Street, in Miami Florida, where the Plaintiffs worked.
6. Defendant F.J. O'HARA & SONS 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). Defendant operates as a cold storage/warehouse/distribution company which sells and/or markets its services and/or goods to customers from throughout the United States and through its business activity, affects interstate commerce. Defendant had more than two employees recurrently engaged in commerce or in the production of goods for commerce, by regularly and recurrently using the instrumentalities of interstate commerce. Defendant uses 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.

7. The Plaintiffs were employed by an enterprise engaged in interstate commerce. Plaintiffs were warehouse workers which regularly handled/worked on goods and/or materials that were moved across State lines. Plaintiffs were directly engaged in interstate commerce by handling and shipping merchandise to out of state locations. Thus, Plaintiffs were covered employees for the purpose of the Act. Therefore, there is FLSA individual coverage.
8. Plaintiffs BYRON H. RUIZ, and NELSON R. BARILLAS were hired by Defendant as non-exempt, salaried warehouse employees, as many others similarly situated employees.
9. Plaintiffs performed the same duties which consisted general cold storage/warehouse work, such as receiving cargo, counting pieces, icing fish, organizing merchandise in the racks, pulling orders, palletizing, shrink wrapping, moving cargo around the warehouse, cleaning, disposing garbage, etc. Plaintiffs never performed activities affecting the safety of operation of motor vehicles. Plaintiffs never exercised any discretion or judgment in any planning, building, placing, distribution, or balancing any pallet, container or loose cargo. Plaintiffs never performed activities affecting the safety of operation of motor vehicles.
10. During the time that Plaintiffs BYRON H. RUIZ, and NELSON R. BARILLAS worked for Defendant, they worked in excess of 40 (forty) hours per week; Plaintiff were paid by the hour or with a salary, but they were not paid for overtime hours at the mandatory rate of time and a half their regular rate as established by the Fair Labor Standards Act.
11. Plaintiff punched in and out, and Defendant were able to track the overtime hours worked by Plaintiffs.

12. Therefore, Defendants willfully failed to pay Plaintiff overtime at the rate of time and a half her regular rate, for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
13. Plaintiffs BYRON H. RUIZ, and NELSON R. BARILLAS seek to recover unpaid regular wages, and unpaid half-time overtime wages accumulated during all their time of employment, as allowable by law.
14. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid regular wages, or overtime hours 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:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME; AGAINST ALL DEFENDANTS;
AS TO PLAINTIFF BYRON H. RUIZ

15. Plaintiff BYRON H. RUIZ re-adopts each and every pertinent and factual allegation as stated in paragraphs 1-14 above as if set out in full herein.
16. This action is brought by Plaintiff BYRON H. RUIZ and those similarly-situated to recover from the Employer unpaid overtime compensation, 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. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."

17. Defendant F.J. O'HARA & SONS 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).
18. The Plaintiff was employed by an enterprise engaged in interstate commerce. Plaintiff was a warehouse worker which regularly handled/worked on goods and/or materials that were moved across State lines. Plaintiff was directly engaged in interstate commerce by handling and shipping merchandise to out of state locations. Thus, Plaintiffs were covered employees for the purpose of the Act.
19. Defendant F. J. O'HARA & SONS employed Plaintiff BYRON H. RUIZ from approximately September 23, 2016 to January 2, 2017 or 14 weeks.
20. Plaintiff was hired as a non-exempt hourly cold storage/warehouse employee, performing the same or similar duties as that of those other similarly-situated "warehouse employees", who Plaintiffs observed worked in excess of 40 hours per week, but that were not paid overtime at the proper rate.
21. During his time of employment Plaintiff had an irregular schedule, Plaintiff worked 6 days per week from Monday to Saturday. Plaintiff worked extended hours, from 10:00, or 11:00 AM to 11:00, or 12:00, or 1:00 AM (14, or 15 hours daily).
22. Plaintiff punched in and out, and Defendant was able to track the overtime hours worked by Plaintiffs.
23. Plaintiff is not in possession of time records, but as per his recollections he worked an average of 65 or more hours per week. Plaintiff was paid for all his hours, but at his regular rate. Plaintiff was not paid for overtime hours at the rate of time and one half his regular rate for every hour worked in excess of 40, as established by the Fair Labor Standards Act.

24. Plaintiff was paid weekly at the rate of \$10.00 an hour on cash basis, without any paystub providing basic information about total number of hours worked, overtime hours, wage rate, employment taxes withheld etc.
25. Defendant's failure to pay Plaintiffs and all current and former employees similarly situated, compensation at a rate not less than one and one-half times the rate at which they are/were employed for work performed beyond the 40 hours workweek, is contrary to the provisions of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
26. The records, if any, concerning the number of hours worked by Plaintiff BYRON H. RUIZ, and all other similarly-situated employees, and the compensation 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 and other employees in the asserted class.
27. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.
28. 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 these amounts are based on preliminary calculations that have been made based on an average of 65 hours weekly at the rate of \$10.00 an hour and that these figures could be subject to modification as new evidence could dictate.

a. Total amount of alleged unpaid wages:

One Thousand Seven Hundred Fifty Dollars and 00/100 (\$1,750.00)

b. Calculation of such wages:

Total Period of Employment: 14 weeks

Total number of hours worked weekly: 65 hours average

Overtime hours: 25 hours weekly

Regular rate: \$10.00 x 1.5 = \$15.00 O/T rate

O/T rate: \$15.00-\$10.00 paid= \$5.00 O/T half-time

O/T half-time \$5.00 x 25 O/T hrs.= \$125.00 weekly x 14 weeks = \$1,750.00

c. Nature of wages (e.g. overtime or straight time):

This amount represents the unpaid half-time overtime.

29. At all times, the Employer/Defendant F.J. O'HARA & SONS failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act, but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek, as provided in said Act.
30. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant, and were not paid time and one half of their regular rate of pay for all overtime hours worked in excess of forty.
31. Defendant F.J. O'HARA & SONS knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remains owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employees' employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.
32. At the time mentioned, individual Defendant GLEIBYS O'HARA was and is now, the owner/partner/director of F.J. O'HARA & SONS. Defendant GLEIBYS O'HARA is 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)]. This individual Defendant acted directly in the interests of F.J. O'HARA & SONS in relation to its employees, including Plaintiff and others similarly situated. Defendant GLEIBYS O'HARA had financial and

operational control of the business, she determined terms and working conditions of Plaintiff and all other similarly situated employees and he is jointly liable for Plaintiffs' damages.

33. Defendants F.J. O'HARA & SONS and GLEIBYS O'HARA willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendant F.J. O'HARA & SONS as set forth above.

34. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BYRON H. RUIZ and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff BYRON H. RUIZ and other similarly-situated individuals, and against the Defendants F.J. O'HARA & SONS and GLEIBYS O'HARA on the basis of Defendants willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty weekly, 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 BYRON H. RUIZ and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT II:
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)
RETALIATORY DISCHARGE; AGAINST ALL DEFENDANTS

35. Plaintiff BYRON H. RUIZ re-adopts each and every factual allegation as stated in paragraphs 1-14 of this complaint as if set out in full herein.
36. Defendant F. J. O'HARA & SONS 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).
37. The Plaintiff was employed by an enterprise engaged in interstate commerce. Plaintiff was a warehouse worker which regularly handled/worked on goods and/or materials that were moved across State lines. Plaintiff was directly engaged in interstate commerce by handling and shipping merchandise to out of state locations. Thus, Plaintiffs were covered employees for the purpose of the Act.
38. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies
39. 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 at the rate of at least one and one-half times the employee's regular rate..."
40. Likewise, 29 U.S.C. 215(a)(3) states... it shall be unlawful for any person— "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding,....."

41. Defendant F.J. O'HARA & SONS employed Plaintiff BYRON H. RUIZ from approximately from September 23, 2016 to January 2, 2017, or 14 weeks.
42. Plaintiff was hired as a non-exempt hourly cold storage/warehouse employee, and he was paid \$10.00 an hour.
43. During his time of employment Plaintiff had an irregular schedule, Plaintiff worked 6 days per week from Monday to Saturday, from 10:00, or 11:00 AM to 11:00, or 12:00 PM or 1:00 AM PM (14, or 15 hours daily).
44. Plaintiff worked an average of 65 or more hours per week. Plaintiff was paid for all his hours, but at his regular rate of \$10.00 an hour. Plaintiff was not paid for overtime hours at the rate of time and one half his regular rate for every hour worked in excess of 40, as established by the Fair Labor Standards Act.
45. Therefore, Defendants willfully failed to pay Plaintiff overtime at the rate of time and a half his regular rate, for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
46. Plaintiff was paid bi-weekly, and beginning October, he began to request to be paid for overtime hours. Plaintiff complained multiple times to his managers, and they told Plaintiff to talk to the owner of the business. Plaintiff talked to GLEIBYS O'HARA, who told Plaintiff "we don't pay overtime here".
47. On or about December 29, 2016, Plaintiff complained about missing overtime payment to GLEIBYS O'HARA for the last time.
48. These complaints constituted protected activity under the Fair Labor Standards Act.
49. On or about January 2, 2017, Plaintiff was fired by GLEIBYS O'HARA, who told Plaintiff that there was no more work for him.

50. At all time during his employment with Defendants, Plaintiff performed his duties satisfactorily. There was no reason other than a retaliatory action to terminate Plaintiff's employment with Defendants.
51. There is closed proximity between Plaintiff's last protected activity on December 29, 2016, and the date of his termination.
52. At the time mentioned, individual Defendant GLEIBYS O'HARA was and is now, the owner/partner/director of F.J. O'HARA & SONS. Defendant GLEIBYS O'HARA is 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)]. This individual Defendant acted directly in the interests of F.J. O'HARA & SONS in relation to its employees, including Plaintiff and others similarly situated. Defendant GLEIBYS O'HARA had financial and operational control of the business, she determined terms and working conditions of Plaintiff and all other similarly situated employees and he is jointly liable for Plaintiffs' damages.
53. Defendants F. J. O'HARA & SONS, and GLEIBYS O'HARA willfully and intentionally refused to pay Plaintiff regular and overtime wages as required by the laws of the United States as set forth above, and then retaliated against Plaintiff by firing him.
54. The motivating factor which caused Plaintiff's discharge as described above was the complaint seeking overtime wages from the Defendants. In other words, Plaintiff would not have been discharged, but for his complaints for overtime wages.
55. The Defendants' termination of the Plaintiff was in direct violation of 29 U.S.C. 215 (a) (3) and, as a direct result, Plaintiff has been damaged.

56. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BYRON H. RUIZ respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;
- B. Enter judgment against Defendants F. J. O'HARA & SONS, and GLEIBYS O'HARA that Plaintiff BYRON H. RUIZ recovers compensatory, damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
- C. That Plaintiff recovers an award of reasonable attorney fees, costs, and expenses.
- D. Order the Defendants to make whole the Plaintiff by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;
- E. Plaintiff BYRON H. RUIZ further prays for such additional relief as the interests of justice may require.

JURY DEMAND

Plaintiff BYRON H. RUIZ demands trial by jury of all issues triable as of right by jury.

COUNT III:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME; AGAINST ALL DEFENDANTS;
AS TO PLAINTIFF NELSON R. BARILLAS

57. Plaintiff NELSON R. BARILLAS re-adopts each and every pertinent and factual allegation as stated in paragraphs 1-14 above as if set out in full herein.

58. This action is brought by Plaintiff NELSON R. BARILLAS and those similarly-situated to recover from the Employer unpaid overtime compensation, 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. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."

59. Defendant F. J. O'HARA & SONS 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).

60. The Plaintiff was employed by an enterprise engaged in interstate commerce. Plaintiff was a warehouse worker which regularly handled/worked on goods and/or materials that were moved across State lines. Plaintiff was directly engaged in interstate commerce by handling and shipping merchandise to out of state locations. Thus, Plaintiffs were covered employees for the purpose of the Act.

61. Defendant F.J. O'HARA & SONS employed Plaintiff NELSON R. BARILLAS from approximately January 1, 2017 to October 23, 2017, or 42 weeks.

62. Plaintiff was hired as a non-exempt hourly cold storage/warehouse employee, performing the same or similar duties as that of those other similarly-situated "warehouse employees", who Plaintiffs observed worked in excess of 40 hours per week, but that were not paid overtime at the proper rate.

63. During his time of employment Plaintiff had a very irregular schedule, Plaintiff had Tuesdays and Sundays off, but he worked 5 days per week. Plaintiff was given every day different schedules, Plaintiff worked between 7:00 AM to 12:30 AM.

64. Plaintiff is not in possession of time records, but as per his recollections he worked an average of 55 or more hours per week.
65. Plaintiff was paid bi-weekly a salary of \$650.00 which intended to pay for 50 regular hours. Any hour in excess of 50, were not paid at any rate, not even the minimum wage rate.
66. Plaintiff was provided with paystubs without basic information about wage rate, and total number of hours worked every week, etc.
67. Plaintiff clocked in and out, and Defendant was able to track the hours worked by Plaintiff and other employees similarly situated. However, Plaintiff was not paid overtime hours.
68. Defendant's failure to pay Plaintiffs and all current and former employees similarly situated, compensation at a rate not less than one and one-half times the rate at which they are/were employed for work performed beyond the 40 hours workweek, is contrary to the provisions of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
69. The records, if any, concerning the number of hours worked by Plaintiff NELSON R. BARILLAS, and all other similarly-situated employees, and the compensation 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 and other employees in the asserted class.
70. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.
71. 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 these amounts are based on preliminary calculations that have been made based on a week of 55 hours. These figures could be subject to modification as new evidence could dictate

a. Total amount of alleged unpaid wages:

Six Thousand Eight Hundred Twenty-Five Dollars and 00/100 (\$6,825.00)

b. Calculation of such wages:

Total Period of Employment: 42 weeks
Total number of hours worked weekly: 55 hours approximately
Overtime hours: 15 hours weekly
Paid: \$650.00: 50 hours = \$13.00
Regular rate: \$13.00 x 1.5 = \$19.50 O/T rate
\$19.50-\$13.00 paid= \$6.50 half-time

1.- Overtime for 10 hours paid at \$10.00 an hour.

\$6.50 half-time x 10 O/T hour=\$65.00 wkly. x 42 weeks= \$2,730.00

2.- Overtime for 5 hours paid at \$0.00

O/T \$19.50 x 5 O/T hours=\$97.50 weekly x 42 weeks=\$4,095.00

Total 1 and 2: \$6,825.00

c. Nature of wages (e.g. overtime or straight time):

This amount represents the unpaid overtime.

72. At all times, the Employer/Defendant F.J. O'HARA & SONS failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act, but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek, as provided in said Act.

73. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

74. Defendant F.J. O'HARA & SONS knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remains owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated

employees' employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.

75. At the time mentioned, individual Defendant GLEIBYS O'HARA was and is now, the owner/partner/director of F.J. O'HARA & SONS. Defendant GLEIBYS O'HARA is 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)]. This individual Defendant acted directly in the interests of F.J. O'HARA & SONS in relation to its employees, including Plaintiff and others similarly situated. Defendant GLEIBYS O'HARA had financial and operational control of the business, she determined terms and working conditions of Plaintiff and all other similarly situated employees and he is jointly liable for Plaintiffs' damages.

76. Defendants F.J. O'HARA & SONS and GLEIBYS O'HARA willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendant as set forth above.

77. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NELSON R. BARILLAS and those similarly-situated respectfully requests that this Honorable Court:

A. Enter judgment for Plaintiff NELSON R. BARILLAS and other similarly-situated individuals, and against the Defendants F.J. O'HARA & SONS and GLEIBYS O'HARA on the basis of Defendants willful violations of the Fair Labor Standards Act,

29 U.S.C. § 201 et seq.; and

- B. Award Plaintiff actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty weekly, 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 NELSON R. BARILLAS and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT IV:
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)
RETALIATORY DISCHARGE; AGAINST ALL DEFENDANTS

- 78. Plaintiff NELSON R. BARILLAS re-adopts each and every factual allegation as stated in paragraphs 1-14 of this complaint as if set out in full herein.
- 79. Defendant F. J. O'HARA & SONS 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).
- 80. The Plaintiff was employed by an enterprise engaged in interstate commerce. Plaintiff was a warehouse worker which regularly handled/worked on goods and/or materials that were moved across State lines.
- 81. Plaintiff was directly engaged in interstate commerce by handling and shipping merchandise to out of state locations. Thus, Plaintiffs were covered employees for the purpose of the Act.

82. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies

83. 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 at the rate of at least one and one-half times the employee's regular rate..."

84. Likewise, 29 U.S.C. 215(a)(3) states... it shall be unlawful for any person— "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding,....."

85. Defendant F.J. O'HARA & SONS employed Plaintiff NELSON R. BARILLAS from approximately January 1, 2017 to October 23, 2017, or 42 weeks.

86. Plaintiff was hired as a non-exempt hourly cold storage/warehouse employee, performing the same or similar duties as that of those other similarly-situated "warehouse employees", who Plaintiffs observed worked in excess of 40 hours per week, but that were not paid overtime at the proper rate.

87. During his time of employment Plaintiff had a very irregular schedule, Plaintiff had Tuesdays and Sundays off, but he worked 5 days per week more than 55 hours weekly.

88. Plaintiff was paid bi-weekly a salary of \$650.00 which intended to pay for 50 regular hours. Any hour in excess of 50, were not paid at any rate, not even the minimum wage rate.

89. Plaintiff clocked in and out, and Defendant was able to track the hours worked by Plaintiff and other employees similarly situated. However, Plaintiff was not paid overtime hours.

90. Therefore, Defendants willfully failed to pay Plaintiff overtime at the rate of time and a half his regular rate, for every hour that he worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
91. Beginning July 2017, Plaintiff began to request to be paid for overtime hours. Plaintiff complained multiple times to his managers, and to the owner of the business, GLEIBYS O'HARA, who told Plaintiff "we don't pay overtime here".
92. On or about October 23, 2017, Plaintiff complained about missing overtime payment to for the last time.
93. These complaints constituted protected activity under the Fair Labor Standards Act.
94. On the same day October 23, 2017 Defendant fired Plaintiff
95. At all time during his employment with Defendants, Plaintiff performed his duties satisfactorily. There was no reason other than a retaliatory action to terminate Plaintiff's employment with Defendants.
96. There is closed proximity between Plaintiff's last protected activity and the date of his termination.
97. At the time mentioned, individual Defendant GLEIBYS O'HARA was and is now, the owner/partner/director of F.J. O'HARA & SONS. Defendant GLEIBYS O'HARA is 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)]. This individual Defendant acted directly in the interests of F.J. O'HARA & SONS in relation to its employees, including Plaintiff and others similarly situated. Defendant GLEIBYS O'HARA had financial and operational control of the business, she determined terms and working conditions of

Plaintiff and all other similarly situated employees and he is jointly liable for Plaintiffs' damages.

98. Defendants F. J. O'HARA & SONS, and GLEIBYS O'HARA willfully and intentionally refused to pay Plaintiff regular and overtime wages as required by the laws of the United States as set forth above, and then retaliated against Plaintiff by firing him.

99. The motivating factor which caused Plaintiff's discharge as described above was the complaint seeking overtime wages from the Defendants. In other words, Plaintiff would not have been discharged, but for his complaints for overtime wages.

100. The Defendants' termination of the Plaintiff was in direct violation of 29 U.S.C. 215 (a) (3) and, as a direct result, Plaintiff has been damaged.

101. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NELSON R. BARILLAS respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;
- B. Enter judgment against Defendants F. J. O'HARA & SONS, and GLEIBYS O'HARA that Plaintiff NELSON R. BARILLAS recovers compensatory, damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
- C. That Plaintiff recovers an award of reasonable attorney fees, costs, and expenses.
- D. Order the Defendants to make whole the Plaintiff by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;

E. Plaintiff NELSON R. BARILAS further prays for such additional relief as the interests of justice may require.

JURY DEMAND

Plaintiff NELSON R. BARILLAS demands trial by jury of all issues triable as of right by jury.

DATED: December 29, 2017

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

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 THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS
BYRON H. RUIZ,
NELSON R. BARILLAS,
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500, Miami, FL 33156
Tel: (305) 446-1500

DEFENDANTS
F. J. O'HARA & SONS INC.,
and GLEIBYS O'HARA
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.
Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
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
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).
a) Re-filed Case YES NO
b) Related Cases YES NO
JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION
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.
LENGTH OF TRIAL via 3 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: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD /s/ Zandro E. Palma, Esq.
DATE December 29, 2017

FOR OFFICE USE ONLY

AMOUNT RECEIPT # IFP

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of California

BYRON H. RUIZ,
NELSON R. BARILLAS,

Plaintiff

v.

F. J. O'HARA & SONS INC.,
and GLEIBYS O'HARA

Defendant

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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) F. J. O'HARA & SONS INC.
Through Its Registered Agent
GLEIBYS O'Hara,
2900 NW 75 Street
Suite SW 1
Miami, FL 33147

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

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:

Print

Save As...

Reset

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of California

BYRON H. RUIZ,
NELSON R. BARILLAS,

Plaintiff

v.

F. J. O'HARA & SONS INC.,
and GLEIBYS O'HARA

Defendant

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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

GLEIBYS O'HARA,
2900 NW 75 Street
Suite SW 1
Miami, FL 33147

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: [Warehouse Workers Sue F. J. O'Hara & Sons Over Unpaid OT Claims](#)
