

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.

WILMORE TAPANES, and all others
similarly situated

Plaintiff,

vs.

TREMONT TOWING, INC., a Florida
Corporation, and MANNY E. DIAZ,
JR., individually,

Defendants.

COMPLAINT

COMES NOW Plaintiff, WILMORE TAPANES, by and through his undersigned attorney, and hereby sues Defendants, TREMONT TOWING, INC., a Florida Corporation, and MANNY E. DIAZ, JR., individually, and as grounds alleges:

JURISDICTIONAL ALLEGATIONS

1. This is an action to recover monetary damages, liquidated damages, interests, costs and attorney's fees for willful violations of overtime and minimum wages under the laws of the United States, the Fair Labor Standards Act, 29 U.S.C. §§201-219) ("the FLSA").
2. Plaintiff is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court.
3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because this action involves the Fair Labor Standards Act, 29 U.S.C. §§201, *et seq.*, a federal statute.
4. Venue is proper in this district pursuant to 28 U.S.C. §1391(c) and (d).

5. Defendant TREMONT is a Florida corporation which regularly conducted business within the Southern District of Florida by operating a towing company.

6. TREMONT is and, at all times pertinent to this Complaint, was engaged in interstate commerce. At all times pertinent to this Complaint, TREMONT operated as an organization which sells and/or markets and/or handles its services and/or goods and/or materials to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of numerous other states, and TREMONT obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the State of Florida, and otherwise regularly engages in interstate commerce, particularly with respect to its employees.

7. Upon information and belief, the annual gross revenue of TREMONT was at all times material hereto in excess of \$500,000.00 per annum. TREMONT gross annual revenue in excess of \$500,000, for the year of 2013, 2014 and 2015. TREMONT had gross annual revenue in excess of \$250,000, during the first half of 2016. Upon information and belief, the gross annual revenue for TREMONT is expected to reach over \$500,000.00 for the year of 2016.

8. By reason of the foregoing, TREMONT is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §3(r) and 3(s) of the FLSA, 29 U.S.C. §203(r) and 203(s) and/or Plaintiff is within interstate commerce.

9. The individual Defendant, DIAZ, is an “employer,” as defined in 29 U.S.C. § 203(d), as he has operational control over the Defendant corporation and is directly involved in decisions affecting employee compensation and hours worked by employees such as Plaintiff and opt-in plaintiffs. Defendant DIAZ controlled the purse strings for the corporate Defendant.

Defendant DIAZ hired and fired employees, determined the rate of compensation and was responsible for ensuring that employees were paid the wages required by the FLSA.

COUNT I: UNPAID OVERTIME WAGES

10. Plaintiff re-alleges and re-avers paragraphs 1 through 9 as fully set forth herein.

11. Plaintiff was employed by the Defendants as a non-exempt tow-truck driver.

12. Plaintiff was employed from on or about March, 2015 through October 6, 2016.

13. Plaintiff worked approximately 65 hours per week.

14. Plaintiff was paid between approximately \$400 and \$600 per week. Plaintiff was not paid overtime wages when he worked more than 40 hour per week. Therefore, Plaintiff claims the halftime rate for each hour worked over 40 hours weekly.

15. Defendants were required to pay Plaintiff overtimes wages. Plaintiff was not paid overtime wages at a rate of time and one half, when he worked more than 40 hours per week.

16. The FLSA requires that employees be paid overtime hours worked in excess of forty (40) hours weekly at a rate of time-and-one-half the regular rate. At all times material hereto, Defendants failed to comply with Title 29 U.S.C. § 201-219 and 29 C.F.R. §516.2 and §516.4 et seq. in that Plaintiff performed services and worked in excess of the maximum hours provided by the FLSA but no provision was made by the Defendants to properly pay him at the rate of time and one-half for all hours worked in excess of forty (40) per workweek as provided in the FLSA.

17. Defendants knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of overtime wages as required by the Fair Labor Standards Act. Defendants were aware of Plaintiff's work schedule and further aware that Plaintiff was working more than 40 hours per week. Defendants were aware of Plaintiff's pay records and the rate that he was being paid for his hours. Despite Defendants' having knowledge of Plaintiff's hours and

their failure to pay overtime wages, Defendants did not change its pay practices and continued to fail to pay Plaintiff, and those similarly situated, the overtime wages he was due. Defendants are also aware of the provisions of the FLSA as they were previously sued for overtime wages. Defendants continue to willfully violate the FLSA despite having been sued for overtime wages.

18. The similarly situated individuals are those individuals whom were employed by the Defendants as laborers like the Plaintiff, and whom were not paid overtime wages.

19. Plaintiff has retained the law offices of the undersigned attorneys to represent him in this action and is entitled to award of reasonable attorney's fees.

WHEREFORE, Plaintiff requests compensatory and liquidated damages, and reasonable attorney's fees and costs from Defendants, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for overtime owing from Plaintiff's entire employment period with Defendants, or as much as allowed by the Fair Labor Standards Act, whichever is greater, along with court costs. In the event that Plaintiff does not recover liquidated damages, then Plaintiff will seek an award of prejudgment interest for the unpaid overtime, and any and all other relief which this Court deems reasonable under the circumstances.

JURY DEMAND

Plaintiff and those similarly-situated demands trial by jury of all issues triable as of right by jury.

COUNT II. CLAIM FOR FLSA MINIMUM WAGES

20. Plaintiff re-alleges and re-avers paragraphs 1 through 9 as fully set forth herein.

21. Plaintiff was employed by the Defendants as a non-exempt tow-truck driver.

22. Plaintiff was employed from on or about March, 2015 through October 6, 2016.

23. Plaintiff worked approximately 65 hours per week.

24. Plaintiff was paid between approximately \$400 and \$600 per week.

25. The FLSA guarantees that employees be paid a minimum wage for each worked.

26. During several weeks of Plaintiff's employment, during the last three years of his employment, Plaintiff was not paid FLSA minimum wages.

27. Defendants knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of minimum wages as required by the Fair Labor Standards Act. Defendants were aware of Plaintiff's work schedule and further aware that Plaintiff was being paid less than federal minimum wage. Defendants were aware of Plaintiff's pay records and the rate that she was being paid for her hours. Despite Defendants' having knowledge of Plaintiff's hours and their failure to pay minimum wages, Defendants did not change its pay practices and continued to fail to pay Plaintiff the minimum wage she was due. Defendants are also aware of the provisions of the FLSA as they were previously sued under the statute.

28. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorney's fees.

WHEREFORE, Plaintiff requests compensatory and liquidated damages, and reasonable attorney's fees and costs from Defendants, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for minimum wages owing from Plaintiff's entire employment period with Defendants, or as much as allowed by the Fair Labor Standards Act, whichever is greater, along with court costs. In the event that Plaintiff does not recover liquidated damages, then Plaintiff will seek an award of prejudgment interest for the unpaid minimum wages, and any and all other relief which this Court deems reasonable under the circumstances.

JURY DEMAND

Plaintiff and those similarly-situated demands trial by jury of all issues triable as of right
by jury.

Dated: October 31, 2016

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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS WILMORE TAPANES

DEFENDANTS TREMONT TOWING, INC. and MANNY E. DIAZ

(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)

(c) Attorneys (Firm Name, Address, and Telephone Number) Mamane Law LLC, 1150 Kane Concourse, Fourth Floor, Bay Harbor Islands, FL 33154. Tel: 305-773-6661

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

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

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

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

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, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions):

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):

unpaid overtime wages and minimum wages; FLSA 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

DATE SIGNATURE OF ATTORNEY OF RECORD

October 28, 2016

/s/ Isaac Mamane

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

WILMORE TAPANES, and all others
similarly situated

Plaintiff,

vs.

TREMONT TOWING, INC., a Florida
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JR., individually,

Defendants.

SUMMONS IN A CIVIL ACTION

To:

TREMONT TOWING, INC. c/o Mark Alhadeff
Alhadeff Law Group, P.L.
11900 Biscayne Blvd., Suite 289
Miami, Florida 33181

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:

MAMANE LAW LLC
1150 Kane Concourse, Fourth Floor
Bay Harbor Islands, FL 33154

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

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

WILMORE TAPANES, and all others
similarly situated

Plaintiff,

vs.

TREMONT TOWING, INC., a Florida
Corporation, and MANNY E. DIAZ,
JR., individually,

Defendants.

SUMMONS IN A CIVIL ACTION

To:
MANNY E. DIAZ, JR.
1747 BAY ROAD
Miami Beach, Florida 33139

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:

MAMANE LAW LLC
1150 Kane Concourse, Fourth Floor
Bay Harbor Islands, FL 33154

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: [Unpaid OT, Minimum Wage Class Action Filed Against Tremont Towing](#)
