

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

HERBS BY THE POUND, LLC,
a Florida Limited Liability Company, and
BRIAN MURPHY, Individually,

Defendants.
_____/

NOTICE OF REMOVAL BY DEFENDANTS,
HERBS BY THE POUND, LLC AND BRIAN MURPHY

Defendants, HERBS BY THE POUND, LLC and BRIAN MURPHY (collectively, "Defendants"), by and through their undersigned counsel and pursuant to 28 U.S.C. §§ 1331, 1441(a), and 1446, hereby remove this action currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida. The removal of this action is based upon the following:

1. On or about April 9, 2018, Plaintiff filed her Complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, entitled *Eugenia Isabel Vega vs. Herbs By The Pound, LLC and Brian Murphy*, Case No. 2018-011202-CA-01 (the "State Action"). On or about April 30, 2018, a copy of the State Action was served on Defendants. This constituted the first legal notice of the State Action for purposes of removal.

2. True and correct copies of all process, pleadings and orders that were served on Defendants in the State Action are attached hereto as **Composite Exhibit "A,"** and are

incorporated herein by reference pursuant to Rule 10(c), Federal Rules of Civil Procedure. No other process, pleadings, or orders have been served upon Defendants in the State Action.

3. The Complaint seeks damages pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* ("FLSA") and the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA"). This is a civil action over which the United States District Courts have original jurisdiction pursuant to 28 U.S.C. § 1331, because this action arises under the FLSA and FMLA.

4. Under federal question jurisdiction, the United States District Courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Any civil case filed in a state court may be removed by a defendant to federal court if the case originally could have been brought in federal court. *See, e.g., Ayers v. Gen. Motors Corp.*, 234 F.3d 514, 517 (11th Cir. 2000); *Joseph v. Nichell's Caribbean Cuisine, Inc.*, 862 F. Supp. 2d 1309, 1311 (S.D. Fla. 2012).

5. This Notice of Removal has been timely filed within thirty (30) days after receipt by Defendants of the initial pleading setting forth the claims for relief upon which removal is based. *See* 28 U.S.C. § 1446(b).

6. A copy of this Notice of Removal, along with a separate Notice of Filing Notice of Removal, is simultaneously being filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and served on counsel for Plaintiff. 28 U.S.C. § 1446(d).

7. Pursuant to 28 U.S.C. § 1441(a), the removal of the State Action to the United States District Court for the Southern District of Florida is proper because this district embraces the place in which the State Action has been pending, *i.e.*, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

WHEREFORE, Defendants, HERBS BY THE POUND, LLC and BRIAN MURPHY,
hereby remove this case to the United States District Court for the Southern District of Florida.

Dated: May 30, 2018
West Palm Beach, FL

Respectfully submitted,

/s/ Eric A. Gordon

Eric A. Gordon
Florida Bar Number: 071341
Email: eric.gordon@akerman.com
AKERMAN LLP
777 South Flagler Drive
Suite 1100 West Tower
West Palm Beach, Florida 33401
Tel: (561) 653-5000
Fax: (561) 659-6313
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 30, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel and parties of record identified on the below Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Eric A. Gordon

Eric A. Gordon
Florida Bar No. 071341

SERVICE LIST

Jason S. Remer, Esq.
Remer & Georges-Pierre, PLLC
44 West Flagler Street, Suite 2200
Miami, Florida 33130
Tel: (305) 416-5000
Fax: (305) 416-5005
EMail: jremer@rgpattorneys.com

Attorneys for Plaintiff, Eugenia Isabel Vega

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 EUGENIA ISABEL VEGA, and other similarly situated individuals, DEFENDANTS HERBS BY THE POUND, LLC, and BRIAN MURPHY, Individually,

(b) County of Residence of First Listed Plaintiff Miami-Dade County (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) Jason S. Remer, Esq., Remer & Georges-Pierre, PLLC, 44 W. Flagler St., Ste. 2200, Miami, FL 33130, Tel 305-416-5000; Fax 305-416-5005 Eric A. Gordon, Esq., Akerman LLP, 777 S. Flagler Dr., Ste 1100W, West Palm Beach, FL 33401, Tel 561-653-5000 Fax: 561-659-6313

(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)

- [] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[X] 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)

- Citizen of This State [] PTF [] DEF
Citizen of Another State [] PTF [] DEF
Citizen or Subject of a Foreign Country [] PTF [] DEF

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

- CONTRACT: [] 110 Insurance, [] 120 Marine, [] 130 Miller Act, [] 140 Negotiable Instrument, [] 150 Recovery of Overpayment & Enforcement of Judgment, [] 151 Medicare Act, [] 152 Recovery of Defaulted Student Loans (Excl. Veterans), [] 153 Recovery of Overpayment of Veteran's Benefits, [] 160 Stockholders' Suits, [] 190 Other Contract, [] 195 Contract Product Liability, [] 196 Franchise
PERSONAL INJURY: [] 310 Airplane, [] 315 Airplane Product Liability, [] 320 Assault, Libel & Slander, [] 330 Federal Employers' Liability, [] 340 Marine, [] 345 Marine Product Liability, [] 350 Motor Vehicle, [] 355 Motor Vehicle Product Liability, [] 360 Other Personal Injury, [] 362 Personal Injury - Med. Malpractice
CIVIL RIGHTS: [] 440 Other Civil Rights, [] 441 Voting, [] 442 Employment, [] 443 Housing/Accommodations, [] 445 Amer. w/Disabilities - Employment, [] 446 Amer. w/Disabilities - Other, [] 448 Education
REAL PROPERTY: [] 210 Land Condemnation, [] 220 Foreclosure, [] 230 Rent Lease & Ejectment, [] 240 Torts to Land, [] 245 Tort Product Liability, [] 290 All Other Real Property
TORTS: [] 365 Personal Injury - Product Liability, [] 367 Health Care/Pharmaceutical Personal Injury Product Liability, [] 368 Asbestos Personal Injury Product Liability
PRISONER PETITIONS: [] 463 Alien Detainee, [] 510 Motions to Vacate Sentence, [] 530 General, [] 535 Death Penalty, [] 540 Mandamus & Other, [] 550 Civil Rights, [] 555 Prison Condition, [] 560 Civil Detainee - Conditions of Confinement
LABOR: [] 710 Fair Labor Standards Act, [] 720 Labor/Mgmt. Relations, [] 740 Railway Labor Act, [] 751 Family and Medical Leave Act, [] 790 Other Labor Litigation, [] 791 Empl. Ret. Inc. Security Act

Click here for: Nature of Suit Code Descriptions

- FORFEITURE/PENALTY: [] 625 Drug Related Seizure of Property 21 USC 881, [] 690 Other
BANKRUPTCY: [] 422 Appeal 28 USC 158, [] 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: [] 820 Copyrights, [] 830 Patent, [] 835 Patent - Abbreviated New Drug Application, [] 840 Trademark
SOCIAL SECURITY: [] 861 HIA (1395ff), [] 862 Black Lung (923), [] 863 DIWC/DIWW (405(g)), [] 864 SSID Title XVI, [] 865 RSI (405(g))
FEDERAL TAX SUITS: [] 870 Taxes (U.S. Plaintiff or Defendant), [] 871 IRS-Third Party 26 USC 7609
OTHER STATUTES: [] 375 False Claims Act, [] 376 Qui Tam (31 USC 3729 (a)), [] 400 State Reapportionment, [] 410 Antitrust, [] 430 Banks and Banking, [] 450 Commerce, [] 460 Deportation, [] 470 Racketeer Influenced and Corrupt Organizations, [] 480 Consumer Credit, [] 490 Cable/Sat TV, [] 850 Securities/Commodities/Exchange, [] 890 Other Statutory Actions, [] 891 Agricultural Acts, [] 893 Environmental Matters, [] 895 Freedom of Information Act, [] 896 Arbitration, [] 899 Administrative Procedure Act/Review or Appeal of Agency Decision, [] 950 Constitutionality of State Statutes
IMMIGRATION: [] 462 Naturalization Application, [] 465 Other Immigration Actions

V. ORIGIN (Place an "X" in One Box Only) [] 1 Original Proceeding [X] 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:

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): Alleged violations of the FLSA, 29 U.S.C. §201, et seq. and the FMLA, 29 U.S.C. § 2601 et seq. 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: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE May 30, 2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Eric A. Gordon

Composite Exhibit A

[Home](http://www.miami-dadeclerk.com/home.asp) (<http://www.miami-dadeclerk.com/home.asp>)
[Online Services](http://www.miami-dadeclerk.com/online_services.asp) (http://www.miami-dadeclerk.com/online_services.asp)
[About Us](http://www.miami-dadeclerk.com/about.asp) (<http://www.miami-dadeclerk.com/about.asp>)
[Contact Us](http://www.miami-dadeclerk.com/contact.asp) (<http://www.miami-dadeclerk.com/contact.asp>)
[My Account](https://www2.miami-dadeclerk.com/PremierServices/login.aspx) (<https://www2.miami-dadeclerk.com/PremierServices/login.aspx>)

HARVEY RUVIN
 CLERK *of the* COURTS
 MIAMI-DADE COUNTY, FLORIDA



Miami-Dade County Civil, Family and Probate Courts Online System

◀ Back to Results

EUGENIA ISABEL VEGA VS HERBS BY THE POUND LLC ET AL

Local Case Number: 2018-011202-CA-01

Filing Date: 04/09/2018

State Case Number: 132018CA011202000001

Case Type: Discrimination - Employment or Other

Consolidated Case No.: N/A

Judicial Section: CA13

Case Status: OPEN

Parties

Number of Parties: 3

➔ Export to ▾

| Party Description | Party Name | Attorney Information | Other Attorney (s) |
|-------------------|------------|----------------------|--------------------|
|-------------------|------------|----------------------|--------------------|







| Party Description | Party Name | Attorney Information | Other Attorney (s) |
|-------------------|------------------------|---|--------------------|
| Plaintiff | VEGA, EUGENIA ISABEL | B#: (Bar Number)165580 N: (Attorney Name)Jason S Remer | |
| Defendant | HERBS BY THE POUND LLC | | |
| Defendant | MURPHY, BRIAN | | |

Hearing Details Number of Hearing: 0

Dockets Dockets Retrieved: 13

Export to ▾

| | Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|--|--------|------------|-----------|-----------------------|------------|--|
| | 11 | 05/11/2018 | | Notice of Appearance | Event | |
| | 10 | 05/04/2018 | | Service Returned | Event | |
| | 9 | 05/02/2018 | | Service Returned | Event | |
| | 8 | 04/19/2018 | | Receipt: | Event | RECEIPT#:3440122 AMT PAID:\$20.00 NAME:JASON S REMER 44 W FLAGLER ST STE 2200 MIAMI FL 33130-6807 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3139-SUMMONS ISSUE FEE 1 \$10.00 \$10.00 3139-SUMMONS ISSUE FEE 1 \$10.00 \$10.00 TENDER TY |
| | | 04/18/2018 | | 20 Day Summons Issued | Service | |

| Number | Date | Book/Page | Docket Entry | Event Type | Comments |
|---|------------|-----------|---|------------|--|
|  7 | 04/18/2018 | | ESummons 20 Day Issued | Event | <i>Parties: MURPHY BRIAN</i> |
| | 04/18/2018 | | 20 Day Summons Issued | Service | |
|  6 | 04/18/2018 | | ESummons 20 Day Issued | Event | <i>Parties: HERBS BY THE POUND LLC</i> |
|  5 | 04/16/2018 | | (M) 20 Day (P) Summons (Sub) Received | Event | |
|  4 | 04/16/2018 | | (M) 20 Day (C) Summons (Sub) Received | Event | |
| 3 | 04/11/2018 | | Receipt: | Event | RECEIPT#:3510602 AMT PAID:\$401.00 NAME:JASON S REMER 44 W FLAGLER ST STE 2200 MIAMI FL 33130- 6807 COMMENT: ALLOCATION CODE QUANTITY UNIT AMOUNT 3100-CIRCUIT FILING FEE 1 \$401.00 \$401.00 TENDER TYPE:E-FILING ACH TENDER AMT:\$401.00 RE |
|  2 | 04/09/2018 | | Complaint | Event | |
|  1 | 04/09/2018 | | Civil Cover | Event | |

[◀ Back to Results](#)

Please be advised:

The Clerk’s Office makes every effort to ensure the accuracy of the following information; however it makes no warranties or representations whatsoever regarding the completeness, accuracy, or timeliness of such information and data. Information on this website has been posted with the intent that it be readily available for personal and public non-commercial (educational) use and to provide the public with direct online access to information in the Miami-Dade Clerk’s Office information systems. Other than making limited copies of this website's content, you may not reproduce, retransmit, redistribute, upload or post any part of this website, including the contents thereof, in any form or by any means, or store it in any information storage and retrieval system, without prior written permission from the Miami-Dade Clerk’s Office.

If you are interested in obtaining permission to reproduce, retransmit or store any part of this website beyond that which you may use for personal use, as defined above, visit our Web API Services (<https://www2.miami-dadeclerk.com/Developers>). To review the complete Miami-Dade County Disclaimer, follow this link: <http://www.miamidade.gov/info/disclaimer.asp> (<http://www.miamidade.gov/info/disclaimer.asp>)

Email (https://miamidadecounty.co1.qualtrics.com/SE/?SID=SV_bDvccbiqJBvQ2LH)

| Login (/PremierServices/login.aspx?ReturnUrl=<https://www2.miami-dadeclerk.com/ocs/Search.aspx>)

Home (<http://www.miami-dadeclerk.com/home.asp>)

| Privacy Statement (http://www.miamidade.gov/info/privacy_and_security.asp)

| Disclaimer (<http://www.miamidade.gov/info/disclaimer.asp>) (<http://www.miamidade.gov>)

| Contact Us (<http://www.miami-dadeclerk.com/contact.asp>)

| About Us (<http://www.miami-dadeclerk.com/about.asp>)

2015 Clerk of the Courts. All Rights reserved.



S0142977

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No.: _____
Judge: _____

EUGENIA ISABEL VEGA

Plaintiff

vs.

HERBS BY THE POUND LLC, BRIAN MURPHY

Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 – 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical
 - Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

III. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. NUMBER OF CAUSES OF ACTION: ()
(Specify)

4

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- Yes
- No

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- No
- Yes – If “yes” list all related cases by name, case number and court:

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Jason S Remer
Attorney or party

FL Bar No.: 165580

(Bar number, if attorney)

Jason S Remer 04/09/2018
(Type or print name)

Date

**IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA**

**EUGENIA ISABEL VEGA,
and other similarly situated individuals,**

Plaintiff,

vs.

Case No.

**HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.**

Defendants.

COMPLAINT

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

COMES NOW, the Plaintiff, EUGENIA ISABEL VEGA (“Plaintiff”), and other similarly-situated individuals, by and through the undersigned counsel, hereby sues Defendants, HERBS BY THE POUND, LLC a Florida Limited Liability Company and BRIAN MURPHY, Individually (Collectively “Defendants”), and in support avers as follows:

GENERAL ALLEGATIONS

1. This is an action by the Plaintiff and other similarly-situated individuals for damages exceeding \$15,000 excluding attorneys’ fees or costs pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”), violations of the Family Medical Leave Act, 29 U.S.C. § 2601 *et seq.* (“FMLA”), and wrongful, retaliatory discharge, to recover unpaid overtime and/or minimum wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorneys’ fees and costs.

2. The jurisdiction of the Court over Plaintiff's "FLSA" and "FMLA" claims is based upon 29 U.S.C. §216(b).
3. Plaintiff was at all times relevant to this action, and continues to be, a resident of Miami Dade County Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the "FLSA" and the "FMLA".
4. Defendant, HERBS BY THE POUND, LLC, having its main place of business in Miami Dade County, Florida, where Plaintiff worked for Defendant and at all times material hereto was and is engaged in interstate commerce.
5. Defendant, HERBS BY THE POUND, LLC, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, HERBS BY THE POUND, LLC.
6. Venue is proper in Miami Dade because all of the actions that form the basis of this Complaint occurred within Miami Dade County and payment was due in Miami Dade County.
7. All conditions precedent for the filing of this action before this Court have been previously met, including the exhaustion of all pertinent administrative procedures and remedies.

PLAINTIFF'S FACTUAL ALLEGATIONS AS TO "FLSA" CLAIMS

8. Plaintiff performed work for Defendants as a non-exempt employee packaging and cleaning herbs from on or about October 10, 2011 to on or about December 4, 2017.
9. At all times material hereto, Plaintiff and Defendants were engaged in an implied agreement whereby Plaintiff would be employed by Defendants and that Plaintiff would be properly paid as provided for by, and not in violation of, the laws of the United States and the State of Florida.

10. During the time period from October 10, 2011 to on or about December 4, 2017, Defendants failed to compensate Plaintiff at the required overtime rate of one and a half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) within a single work week.
11. During the relevant time period, Plaintiff performed approximately twelve (12) overtime hours each month for which Defendants failed to pay Plaintiff at the required overtime rate.
12. Plaintiff VEGA was paid fourteen dollars and fifty cents (\$14.50) for hours worked weekly.
13. At all times material hereto Defendant had or should have had full knowledge of all hours worked by Plaintiff, including those hours worked by Plaintiff VEGA in excess of forty (40) in a given week.
14. Therefore, Plaintiff's overtime rate is \$21.75 [$\14.50 (hourly rate) (x) 1.5= $\$21.75$]. Plaintiff seeks this rate for each of Plaintiff approximate twelve (12) hours of unpaid overtime monthly.
15. Defendants failed to pay Plaintiff for hours above forty (40).
16. As such, Plaintiff is owed approximately \$20,880.00 [$\21.75 (overtime rate) (x) 12 (hours of overtime) (x) 80 months in unliquidated overtime wages).
17. Therefore, from on or about October 10, 2011 to on or about December 4, 2017, Plaintiff is owed approximately \$20,880.00 in unpaid unliquidated overtime wages, plus an additional equal amount as liquidated damages, totaling \$41,760.00.
18. Plaintiff has retained the undersigned counsel in order that her rights and interests may be protected. The Plaintiff has thus become obligated to pay the undersigned a reasonable attorney's fee.

PLAINTIFF'S FACTUAL ALLEGATIONS AS TO THE "FMLA" CLAIMS

19. On or about October 2017, Plaintiff requested two weeks off from work due to undergoing a surgical procedure.
20. Plaintiff's supervisor Mari Luz approved Plaintiff's request for time off.
21. Thereafter, Plaintiff had surgery on or about November 14, 2017.
22. Plaintiff's surgery was not successful; therefore, Plaintiff's doctor postponed Plaintiff's return to work date until December 4, 2017.
23. On or about, November 22, 2017, Plaintiff informed and provided documentation to Defendants about her medical condition.
24. Subsequently, on or about December 4, 2017, Plaintiff returned to work as advised by her Doctor on light duty.
25. Thereafter, on or about December 4, 2017, when Plaintiff returned to work, Plaintiff was terminated by her supervisor David, in retaliation of her disability.

COUNT I

***Wage & Hour Federal Statutory Violation Against
HERBS BY THE POUND, LLC***

26. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 18 of this complaint as if set out in full herein.
27. This action is brought by Plaintiff and other similarly-situated assistant store managers to recover from Defendant unpaid overtime wage 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.
28. 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.”

29. Jurisdiction is conferred on this Court by Title 29 U.S.C. § 216(b).
30. At all times pertinent to this Complaint, Defendant operated as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and also provides its services for goods sold and transported from across state lines of other states, and the Defendant 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.
31. Upon information and belief, the annual gross revenue of the Defendant was at all times material hereto in excess of \$500,000 per annum, and, by virtue of working in interstate commerce, otherwise satisfies the FLSA’s coverage requirements.
32. By reason of the foregoing, the Defendant 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). Defendant’s business activities involve those to which the Fair Labor Standards Act applies. The Plaintiff’s work for the Defendant likewise affects interstate commerce.
33. Plaintiff seeks to recover for unpaid wages accumulated from the date of hire.
34. At all times material hereto, the Defendant 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 Defendant to properly pay him at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in the FLSA.

35. Defendant knew and/or showed reckless disregard of the provisions of the FLSA concerning the payment of overtime and/or minimum wages as required by the Fair Labor Standards Act and remain owing Plaintiff these unpaid wages since the commencement of Plaintiff's employment with Defendant as set forth above. As such, Plaintiff is entitled to recover double damages.

36. Defendant 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/or minimum wages.

WHEREFORE, Plaintiffs respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid overtime wage compensation for hours worked in excess of forty (40) weekly, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and
- E. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.
- F. Plaintiff demands trial by jury of all issues triable as of right by jury.

COUNT II
Wage & Hour Federal Statutory Violation Against
BRIAN MURPHY
(Non-Payment of Wages)

19. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 18, of this Complaint as if set out in full herein.

20. At the times mentioned, Defendant **BRIAN MURPHY** was, and is now, a corporate officer of corporate Defendant **HERBS BY THE POUND, LLC**.
21. Defendant **BRIAN MURPHY** was an employer of Plaintiff within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)], in that Defendant **BRIAN MURPHY** acted directly in the interests of the corporate Defendant-employer in relation to the employees of the corporate Defendant-employer, including Plaintiff.
22. The FLSA defines the term “employer” broadly to include “both the employer for whom the employee directly works as well as ‘any person acting directly or indirectly in the interests of an employer in relation to an employee.’”¹
23. Based on this broad definition, Defendant **BRIAN MURPHY**, in his status as a corporate officer with operational control of a Defendant-corporation's covered enterprise is an employer along with the Defendant-corporation, jointly and severally liable under the FLSA for unpaid wages.²
24. Defendant **BRIAN MURPHY** willfully and intentionally refused to properly pay Plaintiff wages as required by the law of the United States as set forth above and remains owing Plaintiff these wages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant **BRIAN MURPHY**:

- A. Adjudge and decree that Defendant **BRIAN MURPHY** has violated the FLSA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Adjudge and decree that Defendant **BRIAN MURPHY** is an individual with operational control and is, thus, jointly and severally liable under the FLSA for unpaid wages at issue;

¹ *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1298 (11th Cir. 2011)

² *Patel v. Wargo*, 803 F.2d 632, 637-38 (11th Cir.1986)

- C. Award Plaintiff actual damages in the amount shown to be due for unpaid wages, with interest; and
- D. Award Plaintiff an equal amount in double damages/liquidated damages; and
- E. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees;
- F. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances; and
- G. Grant Plaintiff a Trial by Jury.

COUNT III
Interference with Rights Under The FMLA Against
HERBS BY THE POUND, LLC

- 44. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 7; 19 through 25, above as if set out in full herein.
- 45. Plaintiff is an individual entitled to protection under the FMLA.
- 46. Plaintiff is an employee within the meaning of the FMLA.
- 47. Plaintiff engaged in protected activity within the meaning of the FMLA.
- 48. Defendant's actions interfered with Plaintiff's lawful exercise of FMLA rights.
- 49. Defendant's actions constitute violations of the FMLA.
- 50. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

- A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;
- B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the

unlawful employment practices described herein;

C. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and

D. Grant Plaintiff such additional relief as the Court deems just and proper under the circumstances.

COUNT IV
Retaliation Under the FMLA Against
HERBS BY THE POUND, LLC

51. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1 through 7; 19 through 25, above as if set out in full herein.

52. Plaintiff is an individual entitled to protection under the FMLA.

53. Plaintiff is an employee within the meaning of the FMLA.

54. Plaintiff engaged in protected activity within the meaning of the FMLA.

55. Defendant retaliated against Plaintiff for exercising rights protected under the FMLA.

56. Defendant's actions constitute a violation of the FMLA.

57. As a result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer damages.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant:

A. Adjudge and decree that Defendant has violated the FMLA and has done so willfully, intentionally and with reckless disregard for Plaintiff's rights;

B. Enter a judgment requiring that Defendant pay Plaintiff appropriate back pay, front pay, benefits' adjustment, and prejudgment interest at amounts to be proved at trial for the unlawful employment practices described herein;

C. Award Plaintiff the costs of this action, together with a reasonable attorneys' fees; and

D. Grant Plaintiff such additional relief as the Court deems just and proper under the

circumstances.

JURY DEMAND

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

Dated 4-6-18

Respectfully submitted,

Jason S. Remer, Esq.

Florida Bar No.: 0165580
jremer@rgpattoorneys.com
Brody M. Shulman, Esq.
Fla. Bar No.: 092044

REMER & GEORGES-PIERRE, PLLC

44 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018-01202-CA-01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.

Defendants.

_____ /

SUMMONS IN A CIVIL CASE

TO: HERBS BY THE POUND, LLC, through its Registered Agent:

UNITED CORPORATE SERVICES, INC
9200 South Dadeland Blvd., Suite 508
Miami, FL 33156

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK DATE

(BY) DEPUTY CLERK

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018 - 011202 - CA - 01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.

Defendants.

SUMMONS IN A CIVIL CASE

TO: BRIAN MURPHY

377 County Route 12
New Hampton, NY 10958

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK DATE

(BY) DEPUTY CLERK

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018-01202-CA-01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.

Defendants.

_____ /

SUMMONS IN A CIVIL CASE

TO: HERBS BY THE POUND, LLC, through its Registered Agent:

UNITED CORPORATE SERVICES, INC
9200 South Dadeland Blvd., Suite 508
Miami, FL 33156

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

4/18/2018

CLERK DATE

(BY) DEPUTY CLERK



300852

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018 - 011202 - CA - 01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.

Defendants.

SUMMONS IN A CIVIL CASE

TO: BRIAN MURPHY

377 County Route 12
New Hampton, NY 10958

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within **20 days** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

4/18/2018

CLERK

DATE

(BY) DEPUTY CLERK



300852

RETURN OF SERVICE

State of Florida

County of MIAMI-DADE

Circuit Court

Case Number: 2018-11202-CA-01

Plaintiff:

EUGENIA ISABEL VEGA

vs.

Defendant:

HERBS BY THE POUND, LLC, ET. AL.,

For:

Jason S. Remer
REMER & GEORGES-PIERRE, PLLC
44 West Flagler Street
Ste 2200
Miami, FL 33130

Received by OJF SERVICES, INC. on the 25th day of April, 2018 at 4:34 pm to be served on **HERBS BY THE POUND, LLC C/O UNITED CORPORATE SERVICES, INC., AS REGISTERED AGENT, 9200 S. DADELAND BLVD, STE 508, MIAMI, FL 33156.**

I, GREG SCHULTE, do hereby affirm that on the 30th day of April, 2018 at 12:47 pm, I:

CORPORATE - REGISTERED AGENT: served by delivering a true copy of the **SUMMONS AND COMPLAINT** with the date and hour of service endorsed thereon by me, to: **MERINA CAGE** EMPLOYEE AT UNITED CORPORATE SERVICES, INC as **Registered Agent** At the address of: **9200 S. DADELAND BLVD, STE 508, MIAMI, FL 33156** for **HERBS BY THE POUND, LLC C/O UNITED CORPORATE SERVICES, INC., AS REGISTERED AGENT**, and informed said person of the contents therein, in compliance with state statutes.

I CERTIFY THAT I AM OVER THE AGE OF 18, HAVE NO INTEREST IN THE ABOVE ACTION, AND THAT I AM A CERTIFIED PROCESS SERVER, IN GOOD STANDING, IN THE JUDICIAL CIRCUIT IN WHICH THE PROCESS WAS SERVED. "UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING (DOCUMENT) AND THAT THE FACTS STATED IN IT ARE TRUE. 92.525.



GREG SCHULTE
CPS #245

OJF SERVICES, INC.
13727 S.W. 152nd Street
P.M.B. 354
Miami, FL 33177
(786) 293-5750

Our Job Serial Number: OJF-2018005628



g # 70758186 E-Filed 04/16/2018 01:57:40 PM

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018-01202-CA 01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually,

DATE 4/30 FILED 1247 P
INITIALS S OF 245

Defendants.

Mervina
Cage
for
RA

SUMMONS IN A CIVIL CASE

TO: HERBS BY THE POUND, LLC, through its Registered Agent:

UNITED CORPORATE SERVICES, INC
9200 South Dadeland Blvd., Suite 508
Miami, FL 33156

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

4/18/2018

CLERK

DATE



300852

(BY) DEPUTY

CLERK

5628

2
Filing # 70758186 E-Filed 04/16/2018 01:57:40 PM

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

Case No. 2018 - 011202 - CA - 01

HERBS BY THE POUND, LLC
a Florida Limited Liability Company and
BRIAN MURPHY, Individually.

DATE 4/30/18 TIME 1:20 PM
INITIALS JS ID#

Defendants.

SUMMONS IN A CIVIL CASE

TO: BRIAN MURPHY

377 County Route 12
New Hampton, NY 10958

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY
JASON S. REMER, ESQ.
REMER & GEORGES-PIERRE, PLLC.
44 WEST FLAGLER STREET
SUITE 2200
MIAMI, FL 33130

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

4/18/2018

CLERK

DATE

(BY) DEPUTY CLERK



300852

5627

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI DADE COUNTY, FLORIDA

CASE NO. 2018-011202-CA-01

EUGENIA ISABEL VEGA,
and other similarly situated individuals,

Plaintiff,

vs.

HERBS BY THE POUND, LLC,
a Florida Limited Liability Company and
BRIAN MURPHY, Individually,

Defendants.

NOTICE OF ATTORNEY APPEARANCE

ERIC A. GORDON of the law firm of AKERMAN LLP, hereby notices the Court and counsel of his appearance as counsel on behalf of Defendants, HERBS BY THE POUND, LLC and BRIAN MURPHY, in the above-styled action and requests that all further notices and filings herein be served upon him at the address set forth below.

Respectfully submitted,

Dated: May 11, 2018
West Palm Beach, FL

/s/ Eric A. Gordon

Eric A. Gordon (Florida Bar No. 071341)

AKERMAN LLP

777 So. Flagler Drive, Suite 1100 West Tower

Phone: 561-653-5000/Fax: 561-659-6313

Primary Email: eric.gordon@akerman.com

Secondary Email: michelle.reynolds@akerman.com

Secondary Email: danielle.putnam@akerman.com

*Attorneys for Defendants, Herbs By The Pound, LLC
and Brian Murphy*

CERTIFICATE OF SERVICE

This is to certify that I have this 11th day of May, 2018, served a true and correct copy of the foregoing via E-mail to all counsel as listed on the following Service List.

/s/ Eric A. Gordon

Eric A. Gordon

SERVICE LIST

Jason S. Remer, Esq.

Remer & Georges-Pierre, PLLC
44 West Flagler Street, Suite 2200
Miami, FL 33130
Telephone: 305-416-5000
Facsimile: 305-416-5005
Email: jremer@rgpattornerys.com
Attorneys for Plaintiff

Eric A. Gordon, Esq.

AKERMAN LLP
777 So. Flagler Drive, Suite 1100 West Tower
West Palm Beach, FL 33401
Telephone: 561-653-5000
Facsimile: 561-659-6313
Primary Email: eric.gordon@akerman.com
Secondary Email: michelle.reynolds@akerman.com
Secondary Email: danielle.putnam@akerman.com
Attorney for Defendants, Herbs By The Pound, LLC and Brian Murphy

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Herbs by the Pound Facing Class Action Citing Potential Labor Law Violations](#)
