

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 AUG 14 PM 3:52

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

LAWRENCE WALEWSKI, on behalf of
himself and those similarly situated,

Plaintiff,

CASE NO.: 6:17-cv-1483 ORL-406JK

vs.

CUSTOM COMFORT MEDTEK, LLC, a
Florida For Profit Corporation, and
PETER GAUGHN, Individually,

Defendants. /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, LAWRENCE WALEWSKI, and those similarly situated, by and through the undersigned attorney, sues the Defendants, CUSTOM COMFORT MEDTEK, LLC, a Florida Corporation, and PETER GAUGHN, Individually, and alleges:

1. Plaintiff, LAWRENCE WALEWSKI, and those similarly situated, was an employee of Defendants and brings this action for unpaid overtime compensation, liquidated damages, and all other applicable relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (“FLSA”).

General Allegations

2. Plaintiff, LAWRENCE WALEWSKI, and those similarly situated was an hourly paid employee who worked at Defendants’ property within the last three years in Orange County, Florida.

3. Plaintiff, LAWRENCE WALEWSKI, and those similarly situated, worked for Defendants as an employee as a cabinet maker and performing general manual labor.

4. Plaintiff, LAWRENCE WALEWSKI, was paid a regular rate of \$12.20 per hour.

5. Defendant, CUSTOM COMFORT MEDTEK, LLC, is a Florida for profit Corporation that operates and conducts business in Orange County, Florida and is therefore, within the jurisdiction of this Court.

6. Defendant, CUSTOM COMFORT MEDTEK, LLC, is a manufacturer of medical furniture in the Central Florida area. See www.customcomfort.com

7. At all times relevant to this action, PETER GAUGHN was an individual resident of the State of Florida, who owned and operated CUSTOM COMFORT MEDTEK, LLC, and who regularly exercised the authority to: (a) hire and fire employees of CUSTOM COMFORT MEDTEK, LLC; (b) determine the work schedules for the employees of CUSTOM COMFORT MEDTEK, LLC, and (c) control the finances and operations of CUSTOM COMFORT MEDTEK, LLC. By virtue of having regularly exercised that authority on behalf of CUSTOM COMFORT MEDTEK, LLC, PETER GAUGHN is/was an employer as defined by 29 U.S.C. § 201, et seq.

8. This action is brought under the FLSA to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

9. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1331 and the FLSA.

10. During Plaintiff's employment with Defendants, Defendant, CUSTOM COMFORT MEDTEK, LLC, earned more than \$500,000.00 per year in gross sales.

11. Defendant, CUSTOM COMFORT MEDTEK, LLC, employed at least ten (10) employees and paid these employees plus earned a profit from their business.

12. During Plaintiff's employment, Defendant, CUSTOM COMFORT MEDTEK, LLC, employed at least two employees who handled goods, materials and supplies which travelled in interstate commerce, such as cabinet material, chairs, cloth, vinyl seats, and other items used to run

the business.

13. Therefore, at all material times relevant to this action, Defendant, CUSTOM COMFORT MEDTEK, LLC, was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

14. Additionally, Plaintiff, LAWRENCE WALEWSKI, and those similarly situated, was individually covered under the FLSA.

FLSA Violations

15. At all times relevant to this action, Defendants failed to comply with the FLSA because Plaintiff, and those similarly situated, performed services for Defendant for which no provisions were made by Defendant to properly pay Plaintiff, and those similarly situated, for all overtime hours worked.

16. During his employment with Defendant, Plaintiff, and those similarly situated, was not paid time and one-half his regular rate of pay for all hours worked in excess of forty (40) per work week during one or more work weeks.

17. Based upon these above policies, Defendants have violated the FLSA by failing to pay complete overtime pay.

18. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff, and those similarly situated, are in the possession and custody of Defendants.

COUNT I - RECOVERY OF OVERTIME COMPENSATION

19. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-18 above as though stated fully herein.

20. Plaintiff is/was entitled to be paid time and one-half his regular rate of pay for each

hour worked in excess of forty (40) per work week.

21. During his employment with Defendants, Plaintiff, and those similarly situated, worked overtime hours but was not paid time and one-half compensation for same.

22. Specifically, Defendants had a policy wherein Plaintiff was employed to work eight (8) hour shifts over nine (9) days in a two week pay period. Plaintiff would work thirty-five (35) hours in one week and then forty-five (45) hours the following week.

23. Plaintiff was paid his regular rate (\$12.20/hour) for all hours worked until/unless he exceeded eighty (80) hours total in the two-week pay period. Therefore, Plaintiff was not compensated accurate overtime wages during the weeks in which he worked forty-five (45) hours.

24. Plaintiff, and those similarly situated, is entitled to the half-time premium (\$6.10) for every hour worked in excess of forty (40) during a workweek.

25. Defendants have failed provide accurate overtime compensation for numerous pay periods.

26. Defendants did not have a good faith basis for their decision not to pay Plaintiff, and those similarly situated, full overtime compensation.

27. In addition, Defendants utilize the above described pay policy for numerous other employees in the same or similar position as Plaintiff.

28. Additionally, in May 2017 Plaintiff was asked to work on a project for Defendant that required Plaintiff to work from home outside of this regular work schedule. Plaintiff's time spent on this project was not taken into account when calculating Plaintiff overtime hours.

29. Plaintiff worked approximately fifty (50) hours in total on said project but was not factored into Plaintiff's overtime calculations.

30. As a result of Defendants' intentional, willful and unlawful acts in refusing to pay

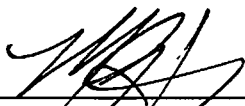
Plaintiff time and one-half his regular rate of pay for each hour worked in excess of forty (40) per work week in one or more work week, Plaintiff, and those similarly situated, has suffered damages plus incurring reasonable attorneys' fees and costs.

31. As a result of Defendants' willful violation of the FLSA, Plaintiff, and those similarly situated, is entitled to liquidated damages.

32. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff, LAWRENCE WALEWSKI demands judgment against Defendants for unpaid overtime compensation, liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

Dated this 10 day of August, 2017



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Attorneys for Plaintiff

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LAWRENCE WALEWSKI, on behalf of himself and those similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew R. Gunter, Esq., Morgan & Morgan, PA, 20 N. Orange Ave., Ste. 1600, P.O. Box 4979, Orlando, FL 32802-4979, (407) 420-1414

DEFENDANTS

CUSTOM COMFORT MEDTEK, LLC, a Florida for Profit Limited Liability Company, and PETER GAUGHN, Individually,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Recopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 216(b)

Brief description of cause:

Actions for unpaid wages and/or minimum wage violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

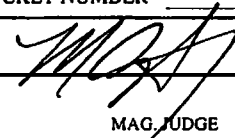
(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Custom Comfort Medtek Accused of Underpaying OT Wages](#)
