

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

DAYLOR YANES, on behalf of himself and  
others similarly situated,

Plaintiff,

COLLECTIVE ACTION COMPLAINT

vs.

FERNANDEZ & FERNANDEZ INSURANCE,  
INC., a Florida profit corporation,  
PREFERRED INSURANCE NETWORK,  
INC., a Florida profit corporation and  
ANTONIA FERNANDEZ, an individual,

Defendants.

\_\_\_\_\_ /

**COLLECTIVE ACTION COMPLAINT**

COMES NOW Plaintiff DAYLOR YANES (“Plaintiff”), who was an employee of Defendants FERNANDEZ & FERNANDEZ INSURANCE, INC., a Florida profit corporation, PREFERRED INSURANCE NETWORK, INC., a Florida profit corporation, and ANTONIA FERNANDEZ, an individual (together, “Defendants”), and on behalf of himself and others similarly situated, by and through undersigned counsel, files this Collective Action Complaint for unpaid overtime wages, liquidated damages, and other relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (hereinafter, the “Act” or “FLSA”) and states as follows:

1. Plaintiff brings this action on behalf of himself and others similarly situated (“Class Members”) for unpaid overtime wages, liquidated damages, and other relief including attorney’s fees and costs under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

2. Plaintiff and Class Members were non-exempt employees of Defendants who worked as insurance agents and were paid salaries but were misclassified as exempt from overtime.

They were subjected to similar violations of the FLSA by Defendants, which were:

- a. Employed by Defendants and paid salaries;
  - b. Misclassified as exempt from overtime; and
  - c. Regularly worked overtime but not paid overtime wages.
3. The class of similarly situated employees or potential collective action members sought to be certified under 29 U.S.C. § 216(b) is defined as:

All persons who worked for Defendants in the last three years as salaried employees and were misclassified as exempt from overtime wages.

4. The precise size and identity of the class can be ascertained from the business records, tax records, and/or employee or personnel records of Defendants and its related and affiliated entities.
5. Plaintiff was forced to retain the undersigned and asks this Court to award reasonable attorney's fees and costs for unpaid overtime wages due under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

#### **I. JURISDICTION AND VENUE**

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because Defendants transact business in this District; because all wages were earned and due to be paid in this District; because Defendants' business is situated in this District; and because most, if not all, of the operational decisions were made in this District.
7. This Court has original jurisdiction over Plaintiff's federal question claims.

## **II. PARTIES**

8. Plaintiff DAYLOR YANES (“Plaintiff”) is over 18 years old and was a *sui juris* resident of Miami-Dade County, Florida, at all times material. He was a salaried, non-exempt employee of Defendants, as the term “employee” is defined by 29 U.S.C. § 203(e).
9. Defendant FERNANDEZ & FERNANDEZ INSURANCE, INC. (“FERNANDEZ INC.”) is a Florida profit corporation that employed Plaintiff and Class Members.
10. Defendant PREFERRED INSURANCE NETWORK, INC. (“PINI”) is a Florida profit corporation that employed Plaintiff and Class Members.
11. Defendant ANTONIA FERNANDEZ (“FERNANDEZ”), an individual and *sui juris*, was a manager, owner and employer at FERNANDEZ INC and PINI. FERNANDEZ acted directly and indirectly in the interest of FERNANDEZ INC and PINI. FERNANDEZ managed FERNANDEZ INC and PINI and had the power to direct employees’ actions. FERNANDEZ had management responsibilities, degree of control over the corporations’ financial affairs and compensation practices, and was in a position to exert substantial authority over corporate policy relating to employee wages and whether to compensate (or not to compensate) Plaintiff and Class Memmmbers in accordance with the FLSA, making Defendant ANTONIA FERNANDEZ an employer pursuant to 29 USC § 203(d).

## **III. COVERAGE**

12. During all material times, Defendant FERNANDEZ & FERNANDEZ INSURANCE, INC. was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1) of the Act, in that the enterprise had employees engaged in commerce or in the production of goods for commerce, or

employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

13. During all material times, Defendant PINI was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s), in that it was engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1) of the Act, in that the enterprise had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.
14. During the all material times, Defendant FERNANDEZ INC. was an employer as defined by 29 U.S.C. § 203(d).
15. During the all material times, Defendant PINI was an employer as defined by 29 U.S.C. § 203(d).
16. During the all material times, Defendant FERNANDEZ was an employer as defined by 29 U.S.C. § 203(d).
17. During all material times, FERNANDEZ INC. and PINI had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

18. Plaintiff seeks certification of collective action from this court, for himself and those similarly situated, pursuant to 29 U.S.C. 216(b).
19. Plaintiff and those similarly situated performed the same or similar jobs as one another in that they were employed by Defendants as insurance agents.

20. Plaintiff and those similarly situated were subjected to similar policies in that Defendants suffered or permitted Plaintiff and Class Members to work without paying them overtime wages.

21. These policies or practices were applicable to Plaintiff and members of the collective action. Application of these policies or practices does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policies or practices apply to all members of the collective action. Accordingly, members of the collective action are properly defined as:

All persons who worked for Defendants in the last three years as salaried employees and were misclassified as exempt from overtime wages.

22. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

23. Defendants violated § 207(a)(1) and § 215(a)(2), by employing Plaintiff and those similarly situated within the meaning of the FLSA for one or more workweeks without compensating them at the overtime rate of one-and-one-half times their regular rate of pay for all hours worked in excess of forty hours in a work week.

24. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of suffering or permitting Plaintiff and those similarly situated to work without paying them one-and-a-half times their regular rate of pay for all hours worked over forty per workweek.

**COUNT I**  
**FAILURE TO PAY OVERTIME WAGE COMPENSATION**  
**IN VIOLATION OF THE FLSA, 29 U.S.C. § 201, et seq**

25. Plaintiff reincorporates and re-alleges paragraphs 1 through 24 as though set forth fully herein and further alleges as follows:
26. Defendants hired Plaintiff and Class Members to work as salaried, non-exempt insurance agents.
27. Defendants willfully and intentionally suffered or permitted Plaintiff and Class Members to work more than forty hours per week without paying them overtime wages.
28. By suffering or permitting Plaintiff and Class Members to perform work-related duties in excess of forty hours per week paying them overtime wages, Defendants owe Plaintiff and Class Members one-and-a-half times their regular rate of pay for each hour worked in excess of forty hours in a week.
29. As a direct and proximate result of suffering or permitting Plaintiff and Class Members to perform work-related duties in excess of forty hours per week without compensating them at the rate of one-and-a-half times their regular rate of pay, Plaintiff and Class Members have been damaged for one or more weeks of work with Defendants.

WHEREFORE Plaintiff DAYLOR YANES, on behalf of himself and others similarly situated, demands entry of judgment in his favor and against Defendants FERNANDEZ & FERNANDEZ INSURANCE, INC., PREFERRED INSURANCE NETWORK, INC. and ANTONIA FERNANDEZ, jointly and severally, as follows:

- a) Award to Plaintiff and others similarly situated for payment of all hours worked in excess of forty per week at one-and-a-half times their regular rate of pay;

- b) Award to Plaintiff and others similarly situated liquidated damages equal to the payment of all overtime hours at one-and-a-half times their regular rate of pay;
- c) Award to Plaintiff and others similarly situated of reasonable attorneys' fees and costs; and
- d) Award such other and further relief as this Court may deem just and proper.

**COUNT II**  
**DECLARATION OF RIGHTS**

30. Plaintiff reincorporates and re-alleges paragraphs 1 through 24 as though set forth fully herein and further alleges as follows:
31. Plaintiff and Defendants have a pending dispute under the FLSA, which this Court has jurisdiction to decide pursuant to 29 U.S.C. § 1331. The Court also has jurisdiction over Plaintiff's request for a declaration of rights pursuant to 29 U.S.C. §§ 2201, 2202.
32. Defendants did not rely on a good faith defense in not paying Plaintiff the applicable overtime wage under the FLSA.
33. A declaration of rights would serve the useful purpose of clarifying and settling the legal relations at issue.
34. The entry of a declaration of the rights of the parties herein would afford relief from uncertainty, insecurity, and controversy giving rise to this proceeding as affecting Plaintiff from Defendants, now and in the future.

WHEREFORE Plaintiff DAYLOR YANES, on behalf of himself and others similarly situated, demands entry of judgment in his favor and against Defendants FERNANDEZ & FERNANDEZ INSURANCE, INC., PREFERRED INSURANCE NETWORK, INC. and ANTONIA FERNANDEZ, jointly and severally, as follows:





**Service List**

**Robert W. Brock II, Esq.**

Bar No. 75320

*Law Office of Lowell J. Kivin*

17 East Flagler Street, Suite 223

Miami, Florida 33131

Tel.: 305.358.6800

Fax: 305.358.6808

PrimaryEmails:[robert@kuvinlaw.com](mailto:robert@kuvinlaw.com)

Secondary Email: [Legal@kuvinlaw.com](mailto:Legal@kuvinlaw.com)

*Attorney for Plaintiff*

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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 DAYLOR YANES, on behalf of himself and others similarly situated,

DEFENDANTS FERNANDEZ & FERNANDEZ INSURANCE, INC., a Florida profit corporation, PREFERRED INSURANCE NETWORK, INC., a Florida profit corporation and ANTONIA FERNANDEZ, an individual,

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert W. Brock II, Esq., Law Office of Lowell J. Kuvin, LLC 17 E. Flagler St, Suite 223, Miami, FL 33131, (305) 358-6800

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(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 [X] 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

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

- 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)

Grid of suit categories including CONTRACT, TORTS, PERSONAL INJURY, LABOR, SOCIAL SECURITY, FEDERAL STATUTES, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, IMMIGRATION, and FEDERAL DEBITS.

V. ORIGIN

- 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): Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq. LENGTH OF TRIAL via 4-5 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 [ ] DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE October 6, 2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

DAYLOR YANES, on behalf of himself and others
similarly situated,

Plaintiff(s)

v.

FERNANDEZ & FERNANDEZ INSURANCE, INC., a
Florida profit corporation, PREFERRED
INSURANCE NETWORK, INC., a Florida profit
corporation and ANTONIA FERNANDEZ, an individu

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) FERNANDEZ & FERNANDEZ INSURANCE, INC.
c/o Registered Agent, FERNANDEZ, ZOILA
6285 SW 40 ST
MIAMI, FL 33155

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:

Robert W. Brock II, Esq.
The Law Office of Lowell J. Kuvin, LLC
17 East Flagler, Street, Suite 223
Miami, Florida 33131
Tel: 305.358.6800
Fax: 305358.6808

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**

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Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PREFERRED INSURANCE NETWORK, INC.
c/o Registered Agent, FERNANDEZ, ZOILA
6285 SW 40 ST
MIAMI, FL 33155

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:

Robert W. Brock II, Esq.
The Law Office of Lowell J. Kuvin, LLC
17 East Flagler, Street, Suite 223
Miami, Florida 33131
Tel: 305.358.6800
Fax: 305358.6808

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You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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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*

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INSURANCE NETWORK, INC., a Florida profit
corporation and ANTONIA FERNANDEZ, an individu

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANTONIA FERNANDEZ
921 SW 176 ST
MIAMI, FL 33157

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.
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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

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\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Fernandez & Fernandez Insurance Misclassified Agents as OT-Exempt](#)

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