

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

2009 MAR 31 AM 9:03

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

Case No.:

FRANCISCO GOMEZ
and others similarly situated,

Plaintiff,

vs.

UNITED FORMING, INC.,
a Georgia Corporation

Defendant,

6:09-cv-576-ORL-31GJK

COMPLAINT

COME NOW the Plaintiff, FRANCISO GOMEZ, and others similarly situated (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel and sue the Defendant, UNITED FORMING, INC. (hereinafter referred to as the "Defendant"), and state as follows:

INTRODUCTION

1. This is an action by Plaintiffs against their former employer for unpaid overtime, and overtime provisions of the Fair Labor Standards Act ("FLSA"). Plaintiffs seek damages and a reasonable attorney's fee.

JURISDICTION

2. This action arises under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et. seq. The Court has jurisdiction over the FLSA claims pursuant to 29 U.S.C. § 216(b).

VENUE

3. The venue of this Court over this controversy is proper based upon the claims arising in Orlando, Orange County, Florida.

THE PARTIES

4. Plaintiff, FRANCISCO GOMEZ, was at all times material employed by Defendant, UNITED FORMING, INC. a Georgia Corporation as a laborer from October 2007 through January 2008.

5. The Defendant, UNITED FORMING, INC., is a Georgia corporation that operates a construction company. Defendant, UNITED FORMING, INC., is an employer as defined by 29 U.S.C. § 203(d). The employer has employees subject to the provisions of the FLSA, 29 U.S.C. § 206, in the facility where Plaintiffs were employed.

6. Plaintiffs were employees of UNITED FORMING, and at all times relevant to violations of the Fair Labor Standards Act, were engaged in commerce as defined by 29 U.S.C. §§ 206(a) and 207(a)(1).

7. Defendant, UNITED FORMING, INC. is an enterprise engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(s)(1).

8. Plaintiffs have retained the Pantas Law Firm to represent them in this matter and have agreed to pay said firm a reasonable attorney's fee for its services.

VIOLATIONS OF THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT UNDER FEDERAL LAW

9. Plaintiff, FRANCISCO GOMEZ, and others similarly situated, re-alleges and incorporates herein the allegations contained in paragraphs 1 through 7 above.

10. Throughout the employment of Plaintiffs, the Defendant repeatedly and willfully violated Section 7 and Section 15 of the Fair Labor Standards Act by failing to compensate Plaintiff at a rate not less than one and one-half times the regular rate at which he was employed for workweeks longer than forty (40) hours. Specifically, Plaintiff worked numerous weeks in excess of forty (40) hours a week, yet was not compensated for all work in excess of forty (40)

hours at a rate not less than one and one-half times the regular rate at which he was employed.

11. Plaintiff is not exempt from the overtime provision of the FLSA.

12. In addition to the named Plaintiff, numerous employees and former employees of Defendant, UNITED FORMING, INC., a Georgia Corporation are similarly situated to the Plaintiff in that they have been denied overtime compensation while employed by Defendant, UNITED FORMING, INC., a Georgia corporation.

13. Defendant, UNITED FORMING, INC., a Georgia Corporation's policy of not paying its employees overtime in violation of the FLSA is both unlawful and company-wide and each non-exempt employee employed by Defendant, UNITED FORMING, INC., a Georgia Corporation, during the three years prior to the filing of this action have been deprived of overtime, similarly to the Plaintiff

14. Plaintiff is representative of these other employees and is acting on behalf of their interests as well as Plaintiffs' own interests in bringing this action.

15. Those similarly situated employees are known to Defendant, UNITED FORMING, INC., a Georgia Corporation, and are readily identifiable and locatable through Defendant, UNITED FORMING, INC., a Georgia Corporation.

16. Those similarly situated employees should be notified of this action and allowed to opt into this action pursuant to 29 U.S.C. §216(b).

17. Unless notice is issued, persons similarly situated to Plaintiff, who have unlawfully deprived of overtime compensation in violation of FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendant, UNITED FORMING, INC., a Georgia Corporation.

WHEREFORE, Plaintiff, and all others similarly situated who join in this action pray for this Court:

- (a) To authorize the issuance of a notice at the earliest possible time to all employees who currently hold or who held positions as "Laborers" during the three (3) year period of time preceding the filing of this action, informing them that this action has been filed and the nature of the action, and of their right to opt-into this lawsuit if they worked for Defendant, UNITED FORMING, INC., a Georgia Corporation, during the liability period, but were not paid overtime wages as required by the FLSA;
- (b) To declare that Defendant, UNITED FORMING, INC., a Georgia Corporation has violated the overtime wages provisions of the FLSA, 29 U.S.C. § 206, as to Plaintiff and persons similarly situated;
- (c) To declare that Defendant, UNITED FORMING, INC., a Georgia Corporation's violations of the FLSA were willful;
- (d) To award Plaintiff, and other similarly situated employees and former employees of Defendant, UNITED FORMING, INC., a Georgia Corporation damages for the amount of unpaid overtime wages due to them, subject to proof at trial;
- (e) To award Plaintiff, and other similarly situated employees and former employees of Defendant, UNITED FORMING, INC., a Georgia Corporation, an additional equal amount equal to the unpaid overtime wages found to be due and owing as liquidated damages; if liquidated damages are not awarded, then in the alternative, prejudgment interest;
- (f) To make the same declarations and awards as prayed for in ¶¶ (a)-(f)

above as to all persons who opt into this action pursuant to 29 U.S.C. § 216(b);

(g) To award Plaintiff, and other similarly situated employees and former employees of Defendant, UNITED FORMING, INC., a Georgia Corporation a reasonable attorneys' fee and costs pursuant to 29 U.S.C. § 216(b); and,

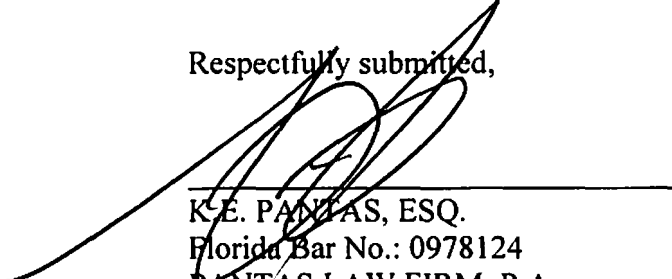
(h) Such other relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: 3/30/09

Respectfully submitted,



K.E. PANTAS, ESQ.
Florida Bar No.: 0978124
PANTAS LAW FIRM, P.A.
250 North Orange Avenue, 11th Floor
Orlando, Florida 32801
Telephone: (407) 425-5775
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Trial Counsel for the Plaintiffs

CIVIL COVER SHEET

6:09 CV 576

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

I. (a) PLAINTIFFS: Francisco Gomez, and others similarly situated

DEFENDANTS: United Forming, Inc., a Georgia Corporation

(b) County of Residence of Plaintiff **ORANGE COUNTY**
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of Defendant **COBB COUNTY**
(IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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

Attorneys (If Known)

Pantas Law Firm, P.A.
K.E. Pantas (0978124)
250 North Orange Ave 11th Fl.
Orlando, Fl 32801
Phone: 407-425-5775 Fax: 407-425-2778

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

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" 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 (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefit <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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 480 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agriculture Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 385 Personal Injury—Product Liability <input type="checkbox"/> 388 Asbestos Personal Injury Product Liability	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	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	

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 Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

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. Section 201

Brief description of cause:
FAIR LABOR STANDARDS ACT

VII. 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

VIII. RELATED CASE(S) IF ANY: (See Instructions) JUDGE _____ DOCKET NUMBER _____

DATE: 3/30/09 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____