

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

CASE NO: 19-10163-CIV-MARTINEZ-OTAZO-REYES

_____)	
PEDRO J. CABRE,)	
KASSANDRA V. CRUZ,)	
KENDRY CRUZ,)	
VANESSA CRUZ,)	
YORMAR E. FARFAN,)	
BELLALIZ E. GONZALEZ,)	
NOIRALITH B. GONZALEZ,)	
GUSTAVO HERNANDEZ,)	
JENNIS MORALES,)	
JOSE MOYEDA,)	
DAVID ROMERO,)	
SAMIRA OMAR,)	
REINALDO J. QUINTERO SR.,)	
REINALDO QUINTERO JR., and)	
ERICK VILLASANA,)	
on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
COTTON COMMERCIAL USA, INC.,)	(JURY TRIAL DEMANDED)
SUPERIOR STAFFING & PAYROLL)	
SERVICES, VCDP COMPANIES INC., and)	COLLECTIVE & CLASS ACTION
DANIEL PAZ, in his individual capacity,)	
)	
Defendants.)	
)	
_____)	

FIRST AMENDED COMPLAINT

1. In the aftermath of Hurricane Irma, in the fall of 2017, plaintiffs and all others similarly situated worked long hours, cleaning up two luxury resort hotels in the devastated Florida Keys. As part of the growing “resilience workforce”—workers engaged in preparing for and repairing after the increasingly frequent and forceful natural disasters in Florida and across the

United States—the plaintiffs worked tirelessly to restore the Florida Keys after the Category 5 hurricane by, among other things, removing debris, chopping up trees, and demolishing sheetrock. The defendants promised set wages for their work but refused to pay the plaintiffs or their colleagues the minimum wages and overtime compensation due to them under the law, even though the plaintiffs regularly worked far in excess of 40 hours per week for weeks at a time. Some plaintiffs were given checks that bounced, while others received no payment at all. Desperate, plaintiffs approached defendants Paz and Cotton and asked about their pay. Cotton’s agent Daniel Paz attempted to silence them by threatening to “send immigration to your house.” He repeated his threat to report the workers to immigration police, if they continued to ask for their pay. To date, the plaintiffs have yet to be paid the amount they are owed under the law.

2. The plaintiffs are employees or former employees of the Defendants Cotton Commercial USA, Inc.¹, Superior Staffing & Payroll Services, VCDP Companies Inc., and Daniel Paz (collectively, “Defendants”) and they bring this action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) on behalf of themselves and all other employees similarly situated. Plaintiffs also bring this action as a class action on behalf of themselves and all others similarly situated in accordance with Fed. R. Civ. P. 23 and Article X, Section 24 of the Florida Constitution as implemented by the Florida Minimum Wage Act (FMWA), Fla. Stat. § 448.110, and under Florida common law. Plaintiffs bring this action because of defendants’ unlawful deprivation of plaintiffs’ rights to overtime compensation and the minimum wage. Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 and compensation, damages, equitable and other relief available under the FLSA, as amended, 29 U.S.C. § 201 *et seq.*, the Florida Constitution, the FMWA, Fla. Stat. § 448.110, and Florida common law.

¹ Plaintiffs have been informed by counsel for Cotton that the correct defendant is entity Cotton Commercial USA, which is a subsidiary of Cotton Holdings, Inc.

JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court by 29 U.S.C. § 216(b), 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 1367(a).

4. Venue lies within this district pursuant to 28 U.S.C. § 1391. A substantial part of the events giving rise to Plaintiffs' claims occurred within this judicial district.

5. At all times material herein, each of the plaintiffs has been employed by Defendants to perform clean-up work in the wake of Hurricane Irma at sites managed by the Defendants in Florida. Specifically, plaintiffs performed such work for Defendants at sites in Key West and Key Largo. Plaintiffs have each given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b), and such consents are appended to this First Amended Complaint as Exhibit A.²

6. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated in accordance with 29 U.S.C. § 216(b).

7. On September 6, 2019, Plaintiffs submitted "Notices of Claim" to Defendants Cotton Commercial USA, Inc., VCDP Companies, Inc., and Superior Staffing & Payroll Services pursuant to Fla. Stat. § 448.110(6)(a), noticing claims for violations of the Florida Minimum Wage Act (FMWA) based on the same facts alleged herein. Defendant Cotton Commercial USA, Inc., was served with these Notices on September 10, 2019, and November 7, 2019. Defendants VCDP Companies Inc. and Superior Staffing & Payroll Services were served with these Notices on November 20, 2019, and November 21, 2019. Because the Defendants rejected the claim and/or otherwise failed to respond to the Notices within 15 calendar days of the date of receipt of the Notices, plaintiffs' claims under the FMWA are timely pursuant to Fla. Stat. § 448.110(6)(b).

² Consent forms which were previously filed with this Court are docketed as Dkt. 1-6 and have not been re-filed.

8. On November 20, 2019, Plaintiffs Kassandra Cruz, Yormar Farfan, and Bellaliz Gonzalez submitted a demand to collect payment from defendant Superior Staffing & Payroll Services for a number of dishonored checks pursuant to Fla. Stat. § 68.065(4). Defendant Superior Staffing & Payroll Services was served with this demand on November 21, 2019. Plaintiffs intend to request leave to amend the instant First Amended Complaint to include an additional count for claims on behalf of plaintiffs Cruz, Farfan, and B. Gonzalez under Fla. Stat. § 68.065 if Defendant SSPS fails to tender payment of the full amount of the dishonored checks, plus the required statutory service charge, within 30 days from the receipt of the Notice.

PARTIES

9. Plaintiffs Kassandra Cruz, Vanessa Cruz, Bellaliz Gonzalez, Gustavo Hernandez, Jennis Morales, Jose Moyeda, Samira Omar, David Romero and Erick Villasana were jointly employed by Defendants as laborers to perform hurricane clean-up duties at the Hyatt Residence Club Key West, Windward Pointe following Hurricane Irma in 2017.

10. Plaintiffs Pedro Cabre, Kendry Cruz, Yormar Farfan, Noiralith Gonzalez, and Reinaldo Quintero Jr. were jointly employed by Defendants as laborers to perform hurricane clean-up duties at the Hilton Key Largo Resort following Hurricane Irma in 2017.

11. Plaintiff Reinaldo Quintero Sr. was jointly employed by Defendants as a coordinator of laborers at five sites, including the Hyatt in Key West and the Hilton Key Largo Resort.

12. At all times relevant herein, all Plaintiffs have been “employees” of Defendants within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(e)(1), and the FMWA, Fla. Stat. § 448.101(2).

13. Defendant Cotton Commercial USA, Inc. (“Cotton”), a subsidiary of Cotton Holdings, Inc., is a Foreign Profit Corporation headquartered in Katy, TX. Defendant Cotton’s registered agent for service of process in Florida is Capitol Corporate Services, Inc., 515 East Park Avenue, 2nd Floor, Tallahassee, FL 32301. Among other things, Cotton provides disaster recovery and construction services in the state of Florida and maintains a permanent warehouse in Ft. Lauderdale. Upon information and belief, Cotton Holdings is owned in whole or in part by the Blackstone private equity firm, based in New York City.

14. Defendant VCDP Companies, Inc. (“VCDP”) is a Florida Profit Corporation headquartered in Tampa, FL. Per VCDP’s filings with the Florida Division of Corporations, Defendant VCDP’s registered agent for service of process in Florida is Adiurka P. Vegacardoso, at 8450 Aiken Court, Tampa, FL 33615. Defendant VCDP owns the fictitious name Superior Staffing & Payroll Services.

15. Defendant Superior Staffing & Personnel Services (“SSPS”) is a fictitious name for a business which is owned by defendant VCDP and is registered with the Florida Division of Corporations. VCDP’s registered agent for service of process is Adiurka P. Vegacardoso, at 8450 Aiken Court, Tampa, FL 33615. SSPS provides staffing services at disaster clean-up and construction sites in Florida.

16. Defendant Daniel Paz is the owner of Superior Staffing & Payroll Services and VCDP Companies, Inc. Defendant Paz is an individual who, upon information and belief, resides and is a citizen of the state of Florida. Defendant Paz has or does control directly or indirectly the management of defendant SSPS and VCDP.

17. Upon information and belief, Adiurka P. Vegacardoso, the registered agent for service of process for defendant VCDP, is the ex-wife of Defendant Daniel Paz.

18. Upon information and belief, defendant Daniel Paz has been in the Ft. Lauderdale area under community supervision (probation) by the Florida Department of Corrections since September 13, 2018. As of December 3, 2019, defendant Paz had not been in contact with his probation officer in approximately 3 weeks and a warrant has been issued for his arrest. His last known address is 739 NW 2nd Avenue, Ft. Lauderdale, FL 33311, but he no longer resides at this location.

19. At all times material to this action, Defendants have been an enterprise engaged in commerce as defined by 29 U.S.C. § 203(r)(1), with an annual dollar business volume in excess of \$500,000. At all times material herein, Defendants have actively conducted business in the state of Florida.

20. Defendants are, and at all material times have been, “employers” within the meaning of the FLSA, 29 U.S.C. § 203(d), and the FMWA, Fla. Stat. § 448.101(3).

21. All Defendants have jointly operated and managed the business in which Plaintiffs have worked; defendants are plaintiffs’ “employers” and/or “joint employers” under the FLSA. Each defendant is jointly and severally liable for any damages owing to the Plaintiffs, including back pay, liquidated damages and attorneys' fees.

FACTS

22. On September 10, 2017, Hurricane Irma made landfall in the Florida Keys.

23. Hurricane Irma destroyed more than 4,000 homes, 1,800 boats, and left vegetation and property debris strewn across the landscape in Monroe County. In addition, almost all homes and businesses in the Keys lost power, water, sewer, cell service and internet service. *See* “Hurricane Irma,” *Emergency Management: Monroe County, FL* (last accessed Aug. 15, 2019), available at <https://www.monroecounty-fl.gov/982/Hurricane-Irma>.

24. In 2017 and at all times relevant herein, the minimum wage in Florida was \$8.10 per hour. The federal minimum wage at all times relevant herein was \$7.25 per hour.

25. In the days following Hurricane Irma, a representative of SSPS, Lizbeth Martinez, visited a Cotton warehouse in Ft. Lauderdale where Cotton maintains moving and construction equipment. During this meeting, Martinez made an agreement with Cotton for clean-up work at five separate sites.

26. While Martinez was at the Ft. Lauderdale warehouse, a Cotton supervisor, Derrick Randle, suggested that SSPS hire plaintiff Reinaldo Quintero Sr. to recruit workers for the five work sites. At the time of this discussion, Quintero Sr. was employed by a temporary staffing company at the Cotton warehouse in Ft. Lauderdale. Martinez agreed that this was a good idea and hired Quintero Sr.

27. Plaintiff Quintero Sr. then began recruiting workers for the five sites in the Florida Keys. However, Quintero Sr. eventually quit after five weeks after the Defendants failed to pay him for his work time.

28. Plaintiffs, excluding plaintiff Quintero Sr. who was a Coordinator, worked at two of the five sites managed by Cotton and staffed by SSPS: the Hyatt Windward Pointe in Key West and the Hilton Key Largo Resort.

29. At these work sites, plaintiffs' job duties included, but were not limited to the following: tearing out and putting up new sheetrock; hauling trees that had fallen with tractors; collecting trash and debris; power-washing outside hotel walls.

30. The job duties plaintiffs other than coordinators performed required the use of drills, saws, forklifts and other heavy machinery.

31. Plaintiff Quintero Sr.'s job duties as a coordinator included but were not limited to: recruiting workers; receiving, reviewing and transmitting timesheets to SSPS; and troubleshooting problems for workers, such as securing housing.

32. Upon information and belief, SSPS initially recruited workers for the clean-up sites with the help of plaintiff Quintero Sr., but Cotton made decisions about hiring and firing of employees at the work sites.

33. SSPS verbally promised to pay the workers at the Hyatt Windward Pointe and the Hilton Key Largo Resort at a rate of \$10 or \$11 per hour, depending on the site.

34. While performing work for Defendants, Plaintiffs at the work sites were required to wear orange vests with Cotton's name and logo.

35. Cotton provided plaintiffs at the hotel sites with gloves, work boots, and hard hats that were worn at the work sites.

36. Supervisors at each clean-up site were employed by Cotton, some or all had come from Houston, and wore black vests with Cotton's name and logo.

37. On the few occasions that plaintiffs did receive paychecks, these paychecks were issued by SSPS and signed by Daniel Paz. However, not all of the paychecks were valid.

38. At the end of each week, workers submitted timesheets with a Cotton logo to Plaintiff Quintero Sr., Plaintiff Quintero Sr. then submitted these timesheets directly to Daniel Paz. These timesheets were labeled as "Crew Activity Sheets."

39. On occasion, Plaintiffs attended meetings at the work site and memorialized their attendance at the meeting by printing and signing their name on a document with Cotton's logo. These logs were labeled "Safety Meeting & Tool Box Meeting Log Record," and included the date

of the meeting, the project name and number, the supervisor's name, and a list of the topics discussed.

40. As employees of Defendants, Plaintiffs and other employees similarly situated regularly worked more than 40 hours per week; however, as set forth below, they have not been paid the legally required minimum wage nor overtime wages for all of the hours they worked for Defendants.

41. A number of workers, including plaintiff Quintero Sr. and plaintiff Hernandez, complained to Daniel Paz about their lack of pay, but Paz threatened to send immigration officials to their homes or to call immigration authorities if they did not leave him alone. For example, Daniel Paz told plaintiff Quintero Sr. via text message that he would report them to immigration, stating "Yo soy Americano" ("I am American"). Similarly, Daniel Paz told plaintiff Hernandez via text message: "No le debo nada a usted ok deje de molester o imigracion se ira a su casa" ("I owe you nothing ok stop bothering [me] or immigration will come to your house"). Most of the workers are recent immigrants fleeing the current turmoil in Venezuela.

42. In November 2017, Cotton staff agreed to look into the workers' lack of compensation. However, in December 2017, Cotton Commercial President James Scaife claimed to a television station, "We have not previously been made aware of any allegations involving Superior Staffing, particularly with regard to the failure to pay employees."

Hyatt Windward Pointe in Key West

43. Approximately 20 individuals were hired to work at the Hyatt Windward Pointe in Key West. These individuals include, but are not limited to, plaintiffs Kassandra Cruz, Vanessa Cruz, Bellaliz Gonzalez, Gustavo Hernandez, Jennis Morales, Jose Moyeda, Samira Omar, David Romero and Erick Villasana.

44. At this Hyatt in Key West, plaintiffs worked approximately 11 hours per day, seven days per week for approximately six weeks beginning on or around September 18, 2017.

45. While plaintiffs working at the Hyatt site received paychecks at the end of the first week and these checks cleared when deposited, all subsequent paychecks received by the plaintiffs bounced. Thus, plaintiffs have not received any pay for work performed at this location after the first week.

46. The paychecks that plaintiffs received, including those that bounced, did not include payment at the rate of time and one half for hours worked over 40 in a workweek.

47. The Hyatt Windward Pointe in Key West was reopened by December 2017, just two months after the storm, according to reviews on the website Trip Advisor.

Hilton in Key Largo

48. Approximately 30 individuals were hired to work at the Hilton in Key Largo. These individuals include, but are not limited to, plaintiffs Pedro Cabre, Kendry Cruz, Yormar Farfan, Noiralith Gonzalez and Reinaldo Quintero Jr.

49. The project at the Hilton in Key Largo lasted approximately six weeks, beginning on or around September 18, 2017.

50. Plaintiffs were promised \$10 per hour for work at this site.

51. Plaintiffs worked for 6-7 days per week for approximately 11 hours per day.

52. The check that plaintiffs received for the final 1-2 weeks of work bounced. As such, plaintiffs and others similarly situated have not been paid for their work time during these weeks.

53. The paychecks that plaintiffs received, including those that bounced, did not include payment at the rate of time and one half for hours worked over 40 in a workweek.

54. At least one individual called plaintiff Quintero Sr. to complain about the lack of pay for the final week of work. However, at that time, plaintiff Quintero Sr. was no longer working for Defendants. The workers spoke with Quintero Sr.'s replacement, who explained that there was a problem with the funds and told him to contact Lizbeth Martinez. The worker then called both Martinez and Daniel Paz, but neither of them responded.

55. The Hilton Key Largo underwent an "extensive transformation" according to its website and, in late 2018, reopened as part of the elite Hilton Curio Collection.

Coordinators

56. Upon information and belief, there were 2 individuals employed by Defendants in the position of Coordinator, including plaintiff Reinaldo Quintero Sr.

57. Plaintiff Quintero Sr. was promised \$24 an hour for his work in this position, plus an additional dollar per hour from each person he recruited to work.

58. Plaintiff Quintero Sr. worked for Defendants for four weeks without pay. Specifically, plaintiff Quintero Sr. worked for Defendants for 18 hours per day for three weeks, and 12 hours per day for another week, but he did not receive any pay for any of his work time.

59. Plaintiff Quintero Sr. did not receive overtime pay at a rate of time and one half for the hours he worked over 40 in a workweek.

COLLECTIVE ACTION ALLEGATIONS

60. Defendants have violated the provisions of the FLSA resulting in damages to plaintiffs and those similarly situated to the plaintiffs in the form of unpaid minimum and overtime wages, incurred and incurring costs, and reasonable attorneys' fees.

61. As a result of the minimum wage and overtime pay violations of the FLSA, the named plaintiffs, as well as those similarly situated to the plaintiffs, have suffered damages by

failing to receive their lawful wages during their tenure of employment with defendants. In addition to the amount of unpaid wages owing to the named plaintiffs, and those similarly situated to the plaintiffs, they are also entitled to an additional amount as liquidated damages pursuant to 29 U.S.C. § 216(b).

62. The plaintiffs and those similarly situated to the plaintiffs are also entitled to an award of attorneys' fees pursuant to 29 U.S.C. § 216(b).

63. Defendants' actions in failing to compensate the plaintiffs and other similarly-situated employees of defendants in accordance with the provisions of the FLSA were willful and not in good faith.

64. There are numerous other similarly situated employees and former employees of defendants who have been improperly compensated in violation of the FLSA who would benefit from the issuance of court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Specifically, all employees and former employees of Defendants who have been employed by the Defendants in Florida to perform clean-up work following Hurricane Irma at sites managed by Defendants should receive notice and the opportunity to join the present lawsuit.

65. Each of the Defendants was and/or is a joint employer of some or all of the plaintiffs for the time period in which each Defendant was either an employer or acted in the interest of an employer. Each Defendant is jointly and severally liable for any damages owing to those plaintiffs, including back pay, liquidated damages and attorneys' fees, for which they were joint employers. The FLSA permits an employee to recover, jointly and severally, from all individuals or entities who are employers or who act in the interest of an employer with respect to the employee under the FLSA.

CLASS ACTION ALLEGATIONS

66. Article X, Section 24 of the Florida Constitution guarantees a “minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.” Article X, Section 24 is implemented by the Florida Minimum Wage Act, Fla. Stat. § 448.110.

67. Defendants have violated the provisions of the FMWA, resulting in damages to plaintiffs and those in the Florida class in the form of unpaid minimum wages, incurred and incurring costs, and reasonable attorneys’ fees.

68. Defendants have also violated their contract with plaintiffs to pay them at hourly rates above that required by the FMWA. Specifically, Defendants promised to pay plaintiffs at the following hourly rates: \$11 per hour for work at the Hyatt Windward Pointe; \$10 per hour for work at the Hilton Key Largo; and \$24 per hour, plus an additional dollar per hour from each person recruited, for work performed by Coordinators.

69. The Florida Class is defined as follows: “All individuals employed by Defendants on an hourly basis to provide clean-up services in Florida during 2017 following Hurricane Irma at the Hyatt Residence Club Key West, Windward Pointe, and the Hilton Key Largo Resort.”

70. **Numerosity.** Upon information and belief, there are approximately 50 members of the Florida Class, consisting of approximately 20 individuals at the Key West location and 30 individuals at the Key Largo location. Thus, the Florida class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, these similarly situated members of the Florida Class are known to Defendants, are readily identifiable, and can be located through Defendants’ work and payroll records.

71. **Commonality.** There are questions of law and fact common to the members of the Florida Class, including but not limited to:

- (a) Whether the Defendants violated the FMWA by failing to pay plaintiffs at the applicable minimum wage of \$8.10 per hour for all hours worked for all hours worked;
- (b) Whether as a result of the minimum wage violations of the FMWA, the named plaintiffs and all members of the Florida Class have suffered damages by failing to receive their lawful wages during their tenure of employment with Defendants and are entitled to an additional amount as liquidated damages pursuant to Fla. Stat. § 448.110(c);
- (c) Whether as a result of the minimum wage violations of the FMWA, the named plaintiffs and all members of the Florida Class are also entitled to an award of attorneys' fees pursuant to Fla. Stat. § 448.110(c);
- (d) Whether Defendants' actions in failing to compensate the named plaintiffs and all other members of the Florida Class in accordance with the provisions of the FMWA were not in good faith or on reasonable grounds for believing that the actions were not a violation of Article X, Section 24 of the Florida Constitution; and
- (e) Whether Defendants violated their verbal contract to pay plaintiffs for all of their work at the following rates: \$11 per hour for work at the Hyatt Windward Pointe; \$10 per hour for work at the Hilton Key Largo; and \$24 per hour for work performed by Coordinators.

72. **Typicality.** The claims of the named plaintiffs, which involve the defendants' systematic and unlawful pay practices, are typical of all members of the Florida Class. The named

plaintiffs have the same interest in this matter as all members of the Florida Class; namely, the named plaintiffs and members of the Florida Class all seek to be paid proper minimum wages for all hours worked while employed by Defendants in 2017.

73. **Adequacy.** The named plaintiffs are adequate class representatives because their interests do not conflict with the interests of the class members they seek to represent, they are committed to pursuing this action, and they have retained the undersigned attorneys, who are competent counsel experienced in wage and hour law and class action litigation, to represent them in pursuing this action.

74. **Rule 23(b)(3).** The requirements of Fed. R. Civ. P. 23(b)(3) are met in this action because the questions of law and/or fact identified above are not only common but will predominate over any individual questions and a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I

Failure to Pay Minimum Wages Pursuant to the FLSA, 29 U.S.C. § 206

75. Plaintiffs repeat and incorporate by reference the allegation set forth in Paragraphs 1 through 74, above.

76. At all times material herein, the FLSA required that employees shall be paid not less than \$7.25 an hour for all hours worked. *See* 29 U.S.C. § 206(a)(1). The Defendants have failed to provide plaintiffs and those similarly situated with any compensation for the many hours they performed clean-up work after Hurricane Irma, let alone the minimum wage. This is a violation of Section 6(a)(1) of the FLSA, 29 U.S.C. § 206(a)(1).

77. Defendants' violations of the FLSA as alleged herein have been done in an intentional, willful, and bad faith manner.

78. As a result of the aforesaid willful violations of the FLSA, minimum wages have been unlawfully withheld by Defendants from plaintiffs, and those similarly situated to them, for which Defendants are liable pursuant to 29 U.S.C. §§ 216(b) and 255, together with an additional equal amount as liquidated damages, interest, reasonable attorneys' fees, and the costs of this action.

79. As a result of Defendants' willful and purposeful violations of the FLSA, there have become due and owing to each of the plaintiffs various amounts that have not yet been precisely determined, although the plaintiffs did provide the Court with an estimate of their damages. *See* Dkt. 19. The employment and work records for each plaintiff are in the exclusive custody and control of Defendants. Defendants are under a duty imposed by the FLSA, 29 U.S.C. § 211(c), and various statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to plaintiffs from which the amounts of Defendants' liability can be ascertained.

COUNT II

Failure to Pay Overtime Wages Pursuant to the FLSA, 29 U.S.C. § 207

80. Plaintiffs repeat and incorporate by reference the allegation set forth in Paragraphs 1 through 79, above.

81. The FLSA requires employers to pay employees overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of the maximum hours described in 29 U.S.C. § 207.

82. At all times material herein, plaintiffs, and those similarly situated to them, have worked hours in excess of the hourly levels specified in the FLSA, 29 U.S.C. § 207(a), in one or more workweeks. As a result, at all times material herein, plaintiffs, and those similarly situated

to them, were entitled to overtime compensation at a rate of not less than one and one-half times their regular rate of pay for the hours they have worked in excess of 40 hours per workweek. 29 U.S.C. § 207(a).

83. At all times material herein, Defendants have failed and refused to provide plaintiffs, and those similarly situated to them, with overtime compensation at a rate of one and one-half times their regular rate of pay for all the hours they have worked in excess of 40 hours a week thereby directly violating Section 7(a) of the FLSA. 29 U.S.C. § 207(a).

84. Defendants' refusal to provide overtime pay at the lawful rate to plaintiffs, and those similarly situated to them, for the hours they have worked in excess of 40 hours in a workweek, as specified in the FLSA, 29 U.S.C. § 207(a), wrongly deprived them of the overtime compensation that has been due to them at all times material herein.

85. As a result of the aforesaid willful violations of the FLSA, overtime compensation has been unlawfully withheld by Defendants from plaintiffs, and those similarly situated to them, for which Defendants are liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, interest, reasonable attorneys' fees, and the costs of this action.

86. As a result of Defendants' willful and purposeful violations of the FLSA, there have become due and owing to each of the plaintiffs various amounts that have not yet been precisely determined, although the plaintiffs did provide the Court with an estimate of their damages. *See* Dkt. 19. The employment and work records for each plaintiff are in the exclusive custody and control of Defendants. Defendants are under a duty imposed by the FLSA, 29 U.S.C. § 211(c), and various statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to plaintiffs from which the amounts of Defendants' liability can be ascertained.

COUNT III

Unlawful Retaliation in Violation of 29 U.S.C. § 215(a)(3)

87. Plaintiffs repeat and incorporate by reference the allegation set forth in Paragraphs 1 through 86, above.

88. Section 215(a)(3) of the FLSA renders it unlawful for employers “to discharge or in any other manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter.” 29 U.S.C. § 215(a)(3).

89. The purpose of the FLSA’s anti-retaliation provisions is to allow employees to report violations of the FLSA without fear of reprisal from their employer. Thus, Section 15(a)(3) prohibits retaliation or threats against employees who complain of not being paid the minimum wage or overtime. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2010).

90. Plaintiffs Reinaldo Quintero Sr. and Gustavo Hernandez, and others, engaged in protected activity under the anti-retaliation provisions of the FLSA by repeatedly complaining to defendant Paz, both in person and via text message, about the defendants’ failure to pay the workers proper minimum and overtime wages.

91. Defendants unlawfully retaliated against plaintiffs Quintero and Hernandez, and others similarly situated, for their complaints regarding the Defendants’ failure to pay the workers proper minimum and overtime wages by threatening to report them to immigration authorities and/or to send immigration authorities to the workers’ homes and then simply refusing to pay them the wages that they were owed in response to their complaints thereby inflicting an adverse employment action upon them.

92. For these willful violations of 29 U.S.C. § 215(a)(3), Defendants are liable to plaintiffs Quintero and Hernandez, and others similarly situated, under 29 U.S.C. § 216(b) for compensatory and punitive damages, reasonable attorneys' fees' and costs, and any other relief deemed appropriate by this Court.

COUNT IV

Failure to Pay Minimum Wages Pursuant to Article X, Sec. 24 of the Florida Constitution as Implemented by the FMWA, Fla. Stat. § 448.110 (as to Defendants Cotton, VCDP, and SSPS)

93. Plaintiffs repeat and incorporate by reference the allegation set forth in Paragraphs 1 through 92, above.

94. Article X, Section 24 of the Florida Constitution guarantees "minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship." Article X, Section 24 is implemented by the Florida Minimum Wage Act, Fla. Stat. § 448.110.

95. At all times material herein, plaintiffs and the class they seek to represent has been entitled to a minimum wage of at least \$8.10 per hour for the time they were employed by Defendants to perform clean-up work after Hurricane Irma.

96. At all times material herein, Defendants Cotton, VCDP, and SSPS have failed and refused to provide plaintiffs and members of the Florida Class with minimum wages for all hours worked, thereby violating the FMWA, Fla. Stat. § 448.110.

97. Defendants' violations of the FMWA as alleged herein have been done in an intentional, willful, and bad faith manner.

98. As a result of the aforesaid willful violations of the FMWA, minimum wages have been unlawfully withheld by Defendants Cotton, VCDP, and SSPS from plaintiffs, and those in the Florida Class, for which Defendants Cotton, VCDP, and SSPS are liable pursuant to Fla. Stat. § 448.110(c), together with an additional equal amount as liquidated damages, interest, reasonable attorneys' fees, and the costs of this action. *See* Fla. Stat. § 448.08.

99. As a result of Defendants willful and purposeful violations of the FMWA, there have become due and owing to each of the Plaintiffs various amounts that have not yet been precisely determined, although the plaintiffs provided Defendants with an estimate of damages in their Notices of Claim. The employment and work records for each plaintiff from which the amounts of Defendants' liability can be ascertained are in the exclusive custody and control of Defendants.

COUNT V

Breach of Contract

100. Plaintiffs repeat and incorporate by reference the allegation set forth in Paragraphs 1 through 99, above.

101. Plaintiffs entered into a valid and enforceable verbal agreement with Defendants when plaintiffs were hired to provide clean-up services after Hurricane Irma in the Fall of 2017. Pursuant to this verbal contract, Defendants promised to pay plaintiffs at the following rates for work performed: \$11 per hour for clean-up work performed at the Hyatt Windward Pointe; \$10 per hour for clean-up work performed at the Hilton Key Largo; and \$24 per hour, plus an additional dollar per hour from each person recruited, for work performed by Coordinators in recruiting workers to perform clean-up work and acting as a middle-man between Defendants and the workers at the clean-up sites.

102. After being accepting a job with Defendants, plaintiffs performed extensive labor for the defendants at their clean-up sites. Specifically, at the Hyatt Windward Pointe, Plaintiffs performed clean-up work as described above in Paragraphs 29-30 for approximately 11 hours per day, seven days per week for approximately five weeks. At the Hilton Key Largo Resort, plaintiffs performed clean-up work as described above in Paragraphs 29-30 for a six-week period from for 6-7 days per week for approximately 11 hours per day, totaling approximately 66-77 hours of work per week. Plaintiff Quintero Sr., employed as Coordinator, worked for Defendants for 18 hours per day for three weeks, and 12 hours per day for another week. Thus, Defendants directly benefitted from Plaintiffs' performance of their obligations under the parties' agreement.

103. Despite Plaintiffs' work, Defendants breached their obligations under the parties' contract and failed to compensate Plaintiffs at the promised rates for all of the hours they worked for the Defendants. In fact, Plaintiffs did not receive *any pay whatsoever* for some of the work they performed for Defendants at the clean-up sites. Thus, Plaintiffs have been harmed as a direct result of the Defendants' failure to compensate Plaintiffs at the hourly rates promised to them by Defendants.

104. As a result of Defendants' breach of the parties' agreement, Plaintiffs seek damages that will put Plaintiffs in the position they would have been in had Defendants not breached their agreement. Specifically, Plaintiffs seek backpay for all hours worked for Defendants based on the hourly rates promised to them, depending on their job assignment.

105. As a result of Defendants' breach of the parties' agreement, there have become due and owing to each of the Plaintiffs various amounts that have not yet been precisely determined. The employment and work records for each plaintiff are in the exclusive custody and control of

Defendants and the Plaintiffs are unable to state at this time the exact amounts owing to each of them.

PRAYER FOR RELIEF

Wherefore, the plaintiffs pray that this Court grant relief against the Defendants as follows:

(a) Enter a declaratory judgment declaring that the Defendants have willfully and wrongfully violated their statutory and legal obligations and deprived plaintiffs and all others who are similarly situated of their rights, privileges, protections, compensation, benefits, and entitlements under the FLSA as alleged herein;

(b) Order a complete and accurate accounting of all the compensation to which the plaintiffs and all others who are similarly situated are entitled;

(c) Award plaintiffs and all others who are similarly situated monetary damages in the form of back pay compensation and benefits; unpaid entitlements; liquidated damages under federal law equal to their unpaid compensation, plus pre-judgment and post-judgment interest;

(d) Award plaintiffs Quintero and Hernandez compensatory and punitive damages for unlawful retaliation under the FLSA;

(e) Award plaintiffs and all members of the Florida Class monetary damages in the form of back pay compensation and benefits; unpaid entitlements; liquidated damages under Florida law equal to their unpaid compensation, plus pre-judgment and post-judgment interest;

(f) Award plaintiffs, all those similarly situated, and all members of the Florida Class their reasonable attorneys' fees to be paid by the defendants, and the costs and disbursements of this action; and

(g) Grant such other legal and equitable relief as may be just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully request a trial by jury on all claims presented in this First Amended Complaint.

Respectfully submitted,

/s/ Erin F. Medeiros

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will electronically transmit the foregoing to the following counsel of record:

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In addition, the foregoing document was sent via First Class Mail to the following defendants:

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