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5-30-07

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EVERARDO HERNANDEZ, on behalf)
of himself and all other plaintiffs)
known and unknown,)

Plaintiff,)

v.)

SUNRISE TREE SERVICE, INC., D/B/A)
SUNRISE TREE SERVICE; AND STEVE)
MCGUINN, INDIVIDUALLY,)

Defendants.)

07CV3017
JUDGE NORDBERG
MAG. JUDGE MASON

JURY DEMAND

COMPLAINT

NOW COMES Plaintiff, EVERARDO HERNANDEZ, on behalf of himself and all other Plaintiffs similarly situated, by and through his attorneys, JOHN W. BILLHORN and the Legal Assistance Foundation of Metropolitan Chicago, for his Complaint against Defendants, SUNRISE TREE SERVICE, INC., D/B/A SUNRISE TREE SERVICE; AND STEVE MCGUINN, INDIVIDUALLY, states as follows:

I. NATURE OF ACTION

1. This action is brought under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*; and the Portal-to-Portal Act, 29 U.S.C. §251 *et seq.*; the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.*; and the Illinois Wage Payment and Collection Act, 820 ILCS Section 115/1 *et seq.*

II. JURISDICTION AND VENUE

2. Jurisdiction arises under the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, the Portal-to-Portal Act, 29 U.S.C. §251 *et seq.*, and for the supplemental

Illinois statutory claims, 28 U.S.C. §1367. Venue lies in the Northern District of Illinois in that Plaintiff is a resident of this district and Defendants are engaged in business in this district.

III. PARTIES

3. Defendants, **SUNRISE TREE SERVICE INC., D/B/A SUNRISE TREE SERVICE, AND STEVE MCGUINN, INDIVIDUALLY** (hereinafter "Defendants"), are engaged in the business of providing landscaping and related services. As such, Defendants' services qualify as an enterprise engaged in commerce as defined by the FLSA. During all relevant times, Defendants were acting directly or indirectly in the interest of the employer in relation to Everardo Hernandez and, therefore, were and are "employers" as defined under both the federal and state statutes relied upon herein.

4. Plaintiff, **EVERARDO HERNANDEZ** (hereinafter "the named Plaintiff"), and all other Plaintiffs of the class, known and unknown (hereinafter referred to as "members of the Plaintiff Class"), are either present or past hourly employees of Defendants. As employees performing duties for an enterprise engaged in commerce, the named Plaintiff and all Plaintiffs similarly situated also were engaged in commerce as defined by the FLSA.

IV. CLASS ALLEGATIONS

Fair Labor Standards Act

5. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §216(b), Count I of this action is maintained by the named Plaintiff as an opt-in representative action, for and on behalf of himself and other past and present hourly employees similarly situated, who have been or will in the future be damaged by Defendants' failure to comply with 29 U.S.C. §201 *et seq.* and §251 *et seq.* Count II alleges a willful violation of the FLSA and seeks an additional, third year of back pay. Count III seeks liquidated damages under the Fair Labor Standards Act, Section 260. The named Plaintiff seeks to send Notice to all similarly situated hourly employees who have been denied proper overtime compensation, as required by 29 USC §216(b) and supporting case law.

Illinois Minimum Wage Law

6. Pursuant to the Illinois Minimum Wage Law, 820 ILCS §105/1 et seq., Count IV of this action is brought by Plaintiff to recover unpaid back wages earned on or after the date three (3) years prior to the filing of this action.

Illinois Wage Payment and Collection Act

7. Pursuant to the Illinois Wage Payment and Collection Act, 820 ILCS §115/1 et seq., Count V of this action is brought by Plaintiff to recover unpaid back wages earned on or after the date five (5) years prior to the filing of this action

V. FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS

8. The named Plaintiff, and all similarly situated members of the Plaintiff Class, were treated as hourly employees for purposes of payroll compensation, but were paid at a straight time rate (not an overtime rate) for some or all hours over 40 per work week.

9. In addition, Plaintiff and members of the Plaintiff Class experienced unauthorized deductions from their pay checks for such things as uniforms and cell phones. These unauthorized weekly deductions were unlawful and without written authorization by Plaintiff and members of the Plaintiff class as required by the federal and state statutes herein relied upon.

COUNT I

VIOLATION OF FAIR LABOR STANDARDS ACT

1-9. Paragraphs 1 through 9 are re-alleged and incorporated as though set forth fully herein as paragraphs 1 through 9 of this Count I.

10. Pursuant to Fair Labor Standards Act, 29 U.S.C. §201 et seq., and the Portal-to-Portal Act, 29 U.S.C. §251 et seq., the named Plaintiff and members of the Plaintiff class are entitled to compensation at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in any week during the two (2) years preceding the filing of this action.

11. Defendants have at all times relevant hereto made improper deductions from compensation. Defendants have also failed and refused to pay compensation to its employees, including the named Plaintiff herein, at the rate of one and one-half times the regular hourly wage rate for hours worked over forty (40) in a work week, all as required by the FLSA.

WHEREFORE, the named Plaintiff, on behalf of himself and all other members of the Plaintiff class, respectfully requests this Court to enter an order:

- (a) awarding back pay equal to the amount of all unpaid compensation for the two (2) years preceding the filing of this Complaint, according to the applicable statute of limitations;
- (b) awarding prejudgment interest with respect to the total amount of unpaid compensation;
- (c) awarding Plaintiff the reasonable attorney's fees incurred by the Billhorn Law Firm, and costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and
- (d) awarding such additional relief as the Court deems appropriate under the circumstances.

COUNT II

WILLFUL VIOLATION OF THE FAIR LABOR STANDARDS ACT

1-9. Paragraphs 1 through 9 of Count I are re-alleged and incorporated as though set forth fully herein as Paragraphs 1 through 9 of Count II.

10. Defendants have, both in the past and presently, willfully failed to pay the named Plaintiff and members of the Plaintiff Class for work weeks in excess of forty (40) hours per week at a rate equal to one and one-half times their regular rate of pay, and have made improper and illegal deductions, despite the fact that Defendants knew, or should have known, of the requirements of the Fair Labor Standards Act.

11. Defendants continue a pattern of deliberate, voluntary, intentional, and willful violation of the Fair Labor Standards Act.

12. Pursuant to the Fair Labor Standards Act, Plaintiff and all members of the Plaintiff Class are entitled to compensation at a rate not less than one and one-half times their regular rate of pay for all the hours worked in excess of forty (40) in any week in the three (3) years preceding the filing of this complaint.

WHEREFORE, the named Plaintiff, on behalf of himself and all members of the Plaintiff Class, respectfully requests this Court to enter an order:

- (a) awarding back pay equal to the amount of all unpaid compensation and all improper deductions from compensation for one (1) additional year, totaling three (3) years preceding the filing of this Complaint;
- (b) awarding prejudgment interest with respect to the amount of unpaid compensation;
- (c) awarding Plaintiff the reasonable attorney's fees incurred by the Billhorn Law Firm, Billhorn and Court costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and
- (d) awarding such additional relief as the Court deems appropriate under the circumstances.

COUNT III

LIQUIDATED DAMAGES

UNDER THE FAIR LABOR STANDARDS ACT

1-9. Paragraphs 1 through 1 of Count I are re-alleged and incorporated as though set forth fully herein as Paragraphs 1 through 9 of Count III.

10. In denying the named Plaintiff and members of the Plaintiff Class compensation at a rate of one and one-half times their hourly rate of pay for hours worked over forty (40) in a work week, Defendants did not act in good faith or based on reasonable grounds.

11. The named Plaintiff and all members of the Plaintiff Class are entitled to liquidated damages equal to the amount of unpaid overtime compensation, pursuant to 29 U.S.C. §260.

WHEREFORE, the named Plaintiff, on behalf of himself and all members of the Plaintiff Class respectfully request this Court to enter an order:

- (a) awarding liquidated damages equal to the amount of all unpaid compensation and illegal deductions from pay;
- (b) awarding Plaintiff the reasonable attorney's fees incurred by the Billhorn Law Firm, Billhorn and costs incurred as a result of Defendants' violation of the Fair Labor Standards Act; and
- (c) for such additional relief as the Court deems appropriate under the circumstances.

COUNT IV

SUPPLEMENTAL STATE LAW CLAIM

VIOLATION OF THE ILLINOIS MINIMUM WAGE LAW

1-9. Paragraphs 1 through 9 of Count I are re-alleged and incorporated as though set forth fully herein as Paragraphs 1 through 9 of this Count IV.

10. The Illinois Minimum Wage Law provides that one and one half times their regular rate of pay must be paid to employees for work performed in excess of 40 hours in a work week.

11. Defendants' failure to pay the overtime wages as described has been willful and/or in bad faith.

WHEREFORE, the named Plaintiff requests this Court to enter an order:

- (a) declaring and decreeing Defendants' compensation practices as described herein, and such other violations which may come to light during the prosecution of this matter, in violation of the provisions of the Illinois Minimum Wage Law;
- (b) awarding an amount of damages, to be shown by the evidence, to which Plaintiff is entitled;

Plaintiff further requests that:

- (c) this Court retain jurisdiction of the case until such time as it is assured that Defendants have remedied the compensation policies and practices complained of herein and are determined to be in full compliance with the law;
- (d) this Court order Defendants to pay to Plaintiff the reasonable attorney's fees incurred by the Billhorn Law Firm, costs, and litigation expenses, as provided by statute; and
- (e) this Court award whatever additional relief it deems just and appropriate under the circumstances.

COUNT V

SUPPLEMENTAL STATE LAW CLAIM

VIOLATION OF THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT

1-9. Paragraphs 1 through 9 of Count I are re-alleged and incorporated as though set forth fully herein as Paragraphs 1 through 9 of this Count V.

10. The Illinois Wage Payment and Collection Act, Section 2, defines wages as “any compensation owed to an employee by an employer pursuant to an employment contract or agreement between the 2 parties” Payment to separated employees is termed “final compensation” and defined as “wages, salaries, earned commissions, earned bonuses . . . and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the two parties.” As part of the employment agreement between the parties herein, Defendants agreed to pay compensation in compliance with state and federal regulations and law.

11. The Illinois Wage Payment and Collection Act, Section 4 provides that “[A]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned”. Plaintiff has been denied payment of rightful overtime wages for varying amounts of time in excess of 13 days from the time the overtime pay was earned.

12. The Illinois Wage Payment and Collection Act, Section 5, provides “[E]very employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee. Plaintiff herein has been denied payment of his rightful overtime wages for varying amounts of time in excess of the next scheduled pay day after his separation.

13. Defendants' acts as complained of herein and described above, namely the continuing refusal and failure to pay the earned overtime wages to Plaintiff, constitutes a violation of the Illinois Wage Payment and Collection Act.

WHEREFORE, the named Plaintiff requests this Court to enter an order:

- (a) declaring and decreeing that Defendants' compensation practices and illegal deductions as described herein, and such other violations which may come to light during the prosecution of this matter, violate the provisions of the Illinois Wage Payment and Collection Act;
- (b) awarding an amount of damages, to be shown by the evidence, to which Plaintiff is entitled; and
- (c) mandating that this Court retain jurisdiction of the case until such time as it is assured that Defendants have remedied the compensation policies and practices complained of herein and are determined to be in full compliance with the law;

Plaintiff further requests that:

- (d) this Court order Defendants to pay to Plaintiff the reasonable attorney's fees incurred by the Billhorn Law Firm, all costs, and litigation expenses, as provided by statute; and
- (e) this Court award whatever additional relief it deems just and appropriate under the circumstances.

Respectfully submitted,



John W. Billhorn, attorney for
Plaintiff, and all other members of the
Plaintiff class.

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**CONSENTIMIENTO PARA
SER PARTE DE LA DEMANDA**

Entrando en este acuerdo el dia 30 de May del 2007, entre EVERARDO HERNANDEZ (Cliente) y John W. Billhorn, (Abogado), Por medio de la presente autorizo y comprometo a Billhorn Law Firm de proseguir los sueldos atrasados y otros derechos en contra de SUNRISE TREE SERVICE, INC., D/B/A SUNRISE TREE SERVICE AND STEVE MCGUINN, individually. Yo el abajo firmante, EVERARDO HERNANDEZ, Por medio de la presente doy mi consentimiento para ser parte de la demanda.

Everardo Hernandez
FIRMA DEL CLIENTE

CONSENT TO BE PARTY PLAINTIFF

This agreement, entered into on this _____ day of _____, 2007 between EVERARDO HERNANDEZ (Client) and John W. Billhorn, (Attorney), hereby authorizes and engages the Billhorn Law Firm to pursue back wages and other relief against SUNRISE TREE SERVICE, INC., D/B/A SUNRISE TREE SERVICE AND STEVE MCGUINN, individually, and by his signature below, EVERARDO HERNANDEZ, hereby consents to be a party Plaintiff in said law suit.

Everardo Hernandez
CLIENT'S SIGNATURE