

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

DEC 08 2009

JAMES M. HATTEN, Clerk
Deputy Clerk

Anthony Foushi and Nickie Foushi)
)
Plaintiffs,)
)
v.)
)
Home Improvement Outlet, Inc. and)
Derek Sibley,)
)
Defendants.)

CIVIL ACTION FILE

NO. **1 09-CV-3450**

JURY TRIAL DEMANDED

WSD

COMPLAINT

COME NOW Plaintiffs Anthony Foushi and Nickie Foushi (hereinafter sometimes "Plaintiffs"), and file this lawsuit against Defendants Home Improvement Outlet, Inc. (HIO) and Derek Sibley (hereinafter sometimes "Defendants"), and show the following:

I. Nature of Complaint

1.

Plaintiffs bring this action to obtain full and complete relief and to redress the unlawful employment practices described herein.

2.

This action seeks declaratory and injunctive relief, liquidated and actual

damages for Defendants' failure to pay federally mandated overtime wages to Plaintiffs in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 *et seq.* (hereinafter "FLSA") during the periods of Plaintiffs' employment with Defendants.

II. Jurisdiction and Venue

3.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1337, 1367 and 29 U.S.C. § 216(b).

4.

HIO is a Georgia corporation doing business in the State of Georgia, and the unlawful employment practices described herein occurred at 507 Atlanta Highway Southeast, Winder, GA, 30680. Defendant Sibley is a resident of this judicial district. Accordingly, venue in this Court is proper pursuant to 28 U.S.C § 1391(b)(2).

III. Parties and Facts

5.

Plaintiffs are residents of the State of Georgia and were "employees" (as defined under FLSA §3(e), 29 U.S.C. §203(e)) for Defendants. The

Foushi's performed non-exempt labor for the Defendants during their periods of employment.

6.

Plaintiffs were not paid the overtime wage differential required by FLSA §7, 29 U.S.C. §207 when they worked over forty (40) hours in a workweek.

7.

HIO is a private employer engaged in interstate commerce, and its gross revenues exceed \$500,000 per year. Defendant Sibley is the CEO, CFO, and Secretary of HIO. As such Sibley controlled the day to day operations and was aware that the Foushi's were working overtime, and therefore is an employer for purposes of FLSA liability.

Defendants are "employers" within the definition of FLSA §3(d), 29 U.S.C. §203(e) and governed by and subject to FLSA §7, 29 U.S.C. §204 and §207.

**Count I - Violation of the overtime wage requirement
of the Fair Labor Standards Act.**

8.

Plaintiffs reallege and incorporate herein all preceding paragraphs of this Complaint.

9.

Defendants have violated FLSA §7, 29 U.S.C. §207, by failing to pay overtime wages for time that the Foushi's worked in excess of forty (40) hours in a workweek during their periods of employment with Defendants.

10.

Pursuant to FLSA §16, 29 U.S.C. §216, Plaintiffs bring this lawsuit to recover their overtime wage differential, liquidated damages in an equal amount, attorney's fees, and the costs of this litigation.

Plaintiff Nickie Foushi worked for Defendants from October, 2006 through August, 2008, six to seven days per week every week, and many holidays, logging well over 1926 hours of overtime.

Plaintiff Anthony Foushi worked for Defendants from January, 2007 through August, 2008, six to seven days per week every week, and many holidays, logging well over 1473 hours of overtime.

11.

During the periods of Plaintiffs' employment Defendants knowingly,

intentionally and willfully violated the FLSA by failing to pay Plaintiffs the overtime compensation to which they were entitled.

12.

During the periods of Plaintiffs' employment Defendants "knew or showed reckless disregard" that their conduct violated overtime laws under the FLSA.

13.

During the periods of Plaintiffs' employment Defendants failed to act in good faith and had no reasonable grounds for believing they were not violating the FLSA.

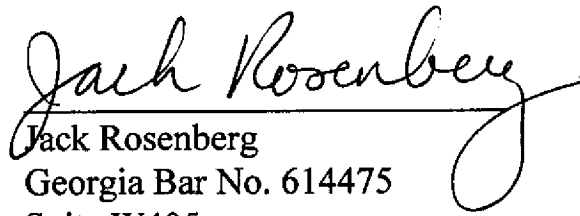
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Require Defendants to pay Plaintiffs damages for unpaid overtime compensation calculated at one and one-half times the proper normal rate that Plaintiffs would have received but for Defendants' unlawful conduct;
- b. Require Defendants to pay Plaintiffs liquidated damages as provided for under the FLSA;

- c. Issue a declaratory judgment that Defendants have engaged in unlawful employment practices in violation of the FLSA with respect to Plaintiffs;
- d. Award Plaintiffs their reasonable attorney's fees and costs and expenses of suit arising from Defendants' violations under the FLSA;
- e. Provide such other and further relief as the Court may deem just and proper.

Respectfully submitted this 7th day of December, 2009.


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