

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: **09-CV-61613-Cohn-Seltzer**

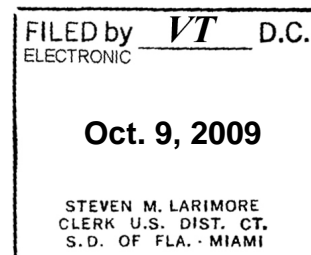
MARIBEL DIAZ, on behalf of herself
and all others similarly situated,

Plaintiff,

vs.

STEINGER ISCOE & GREENE, P.A., and
WILLIAM J. MCAFEE, Individually,

Defendants.



COMPLAINT

Plaintiff, MARIBEL DIAZ, (hereinafter referred to as "Plaintiff"), is a former employee of Defendants, STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually, (hereinafter referred to as "Defendants"), and brings this action on behalf of herself and all other employees and former employees of Defendants similarly situated to her for compensation and other relief under the Fair Labor Standards Act as amended, 29 U.S.C. § 216(b).

1. Plaintiff is a citizen and resident of Broward County, Florida and within the jurisdiction of this Honorable Court.

2. Defendant, STEINGER ISCOE & GREENE, P.A., is a Florida corporation licensed to do business and doing business in the State of Florida, with a principal place of business in Broward County, Florida and within the jurisdiction of this Honorable Court.

3. Defendant, WILLIAM J. MCAFEE, upon information and belief, was at all times material hereto a principal senior management staff, and/or owner of the corporation, and/or officer and/or director of the corporation, of STEINGER ISCOE & GREENE, P.A., and determined

its payroll, and controlled the terms and conditions of Plaintiff's employment.

4. All Defendants' were employers of the Plaintiff as defined in 29 U.S.C. § 203(d), and Plaintiff was an employee of Defendants as defined in 29 U.S.C. § 203 (e)(1). At all times hereafter, when referring to "employer", the Plaintiff will be referring to all Defendants.

5. This action is brought to recover from Defendants unpaid overtime compensation, commission, liquidated damages, and costs and reasonable attorney's fees under the provisions of Title 29 U.S.C § 201 et seq., and specifically under the provisions of Title 29 U.S.C. § 216(b) (the "Act").

6. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 216(b). Defendants are, and at all times pertinent to this Complaint was, engaged in interstate commerce. At all times pertinent to this Complaint, Defendants, STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually, regularly operates numerous business. Based upon information and belief the annual gross revenue of Defendants was in excess of \$500,000.00 per annum.

7. By reason of the foregoing, Defendants were, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in § 3(r) and § 3(s) of the Act, 29 U.S.C. § 203(r) and § 203(s).

8. The additional persons who may become Plaintiffs in this action are other weekly/bi-weekly paid and/or salaried employees and/or former employees of the Defendants who are and who were subject to the payroll practices and procedures and who were not paid their overtime premium of their regular rate of pay for all overtime hours worked beginning on or after October, 2006.

9. At all times pertinent to this Complaint Defendants failed to comply with Title 29 U.S.C. §§ 201-219 and DOL Regulation 29 C.F.R. §§ 516.2 and 516.4 in that Plaintiff and those

similarly situated to Plaintiff performed services for Defendants for which no provisions was made by the Defendants to properly pay Plaintiffs for those hours.

10. From March, 2009 through September, 2009, Plaintiff, MARIBEL DIAZ, was employed by Defendants. By reason of such employment, Plaintiff was employed during such period by an enterprise engaged in commerce with the meaning of 29 U.S.C. §§ 206(a) and 207(a). Further, Plaintiff, herself was engaged in commerce. The work performed by Plaintiff was directly essential to Defendants, STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually, in interstate commerce, which was directly essential to the business performed by Defendants.

11. Plaintiff's employment with Defendants provided for compensation on a bi-weekly basis. Plaintiff was not paid her overtime premium of her regular rate of pay for all hours worked in excess of forty (40) during a work week.

12. In the course of employment with Defendants, Plaintiff and all other similarly situated employees, worked the number of hours required of them but was not paid their overtime premium of their regular rate of pay for all hours worked in excess of forty (40) during a work week.

13. The records, if any, concerning the number of hours actually worked by Plaintiff and the compensation actually paid to her are in the possession, custody and control of Defendants.

14. Plaintiff asserts she is entitled to her overtime premium for her dates of employment of March, 2009 through September, 2009 for a relevant period of 26 weeks.

15. From March 2009 through June, 2009, Plaintiff was being compensated at a salary of \$50,000.00 a year and worked an average of 20 hours of overtime per week. Based on a salary rate, Plaintiff claims her overtime premium which calculates to \$8.01 an hour x 20 hours per work week x 14 weeks = \$2,243.57. Plaintiff would be entitled to \$2,243.57 plus liquidated damages and plus attorneys fees and costs.

16. From July, 2009 through September, 2009, Plaintiff was being compensated at a salary of \$50,000.00 a year and worked an average of 10 hours of overtime per week. Based on a salary rate, Plaintiff claims her overtime premium which calculates to \$9.61 an hour x 10 hours per work week x 12 weeks = \$1,153.20. Plaintiff would be entitled to \$1,153.20 plus liquidated damages and plus attorneys fees and costs.

COUNT 1
RECOVERY OF OVERTIME COMPENSATION
As to all Defendants

Plaintiff re-adopts and re-alleges all allegations contained in Paragraph 1 through 16 above.

17. Plaintiff is entitled to be paid her overtime premium of her regular rate of pay for each hour worked in excess of forty (40) per work week.

18. By reason of said intentional, willful and unlawful acts of Defendants, STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually, Plaintiff suffered damages plus incurring costs and reasonable attorney's fees.

19. As a result of Defendants' willful violation of the Act, all Plaintiff's are entitled to liquidated damages in an equal amount to that set forth in Paragraph 17 above.

20. Plaintiff demands trial by jury.

WHEREFORE, for work weeks beginning on or after October, 2006, Plaintiff, MARIBEL DIAZ, and those similarly situated demands judgment against Defendants, STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually, for the wages and overtime payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages and reasonable attorney's fees and costs of suit, and for all proper relief including prejudgment interest.

DATED THIS 8, day of October, 2009.

Respectfully submitted,

CHARLES H. BECHERT, III, P.A

JOSEPH M. MAUS, P.,A

Counsel for Plaintiff

901 East Atlantic Blvd.

Pompano Beach, Florida 33060

Tel: (954) 941-8363

Fax: (954) 941-8337

Tripchb@aol.com

By: 

Charles H. Bechert, III, Esquire

Fla. Bar # 985971

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 THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS

MARIBEL DIAZ, on behalf of herself and all others similarly situated,

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

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

Charles H. Bechert, III, Esq., 901 E. Atlantic Blvd., Pompano Beach, FL 33060. Ph. (954) 941-8363 / Fax (954) 941-8337

DEFENDANTS

STEINGER ISCOE & GREENE, P.A., and WILLIAM J. MCAFEE, Individually,

County of Residence of First Listed Defendant Broward (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Unknown

(d) Check County Where Action Arose: 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
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

Handwritten note: 0:09 CV 01613 - Cohn-Seltzer

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

- Citizen of This State PTF 1 DEF 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed- (see VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page): a) Re-filed Case YES NO b) Related Cases YES 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): 29 U.S.C. § 216(b) - unpaid overtime wage claim. LENGTH OF TRIAL via 3-5 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 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD DATE

FOR OFFICE USE ONLY AMOUNT 300 RECEIPT # 317767 IFP