

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

DANIEL D. GARCIA,)
JOSEPH L. AMIGLIORE,)
SCOTT H. CHAPPELL,)
CHRIS COOKSEY,)
PAMELA DRIGGERS,)
SCOTT M. GRAGEN,)
JUSTIN W. HARRINGTON,)
CHRISTOPHER H. HAYES,)
TODD HIME,)
MURREL LIVERMAN,)
DAVID C. MILLS,)
JOHN M. NOWERY,)
THOMAS REEVES,)
JOSEPH F. RINAUDO, II,)
MIGUEL RIOSECO, and)
CHRIS TRUBELHORN, individually and)
on behalf of themselves and all)
others similarly situated,)
Plaintiffs,)
v.)
MARION COUNTY, FLORIDA,)
Defendant.)

Case No:
JURY TRIAL DEMANDED

PLAINTIFFS' COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

Plaintiffs, by and through their counsel, respectfully submit their complaint against the Board of County Commissioners, Marion County, Florida, and state as follows:

PARTIES

1. Plaintiffs Daniel D. Garcia, Joseph L. Amigliore, Scott H. Chappell, Chris Cooksey, Pamela Driggers, Scott M. Gragen, Justin W. Harrington, Christopher Hayes, Todd Hime, Murrel Liverman, David C. Mills, John M. Nowery, Thomas Reeves, Joseph Rinaudo, II, Miguel Rioseco, and Chris Trubelhorn (“Plaintiffs”), are current and/or former employees of the defendant, Marion County, Florida, (“Defendant” or “County”). At all times material herein, Defendant has employed Plaintiffs in the position of Captain at Marion County Fire Rescue.

2. Plaintiffs bring this action as a collective action in accordance with 29 U.S.C. §216(b) of the Fair Labor Standards Act (“FLSA”) against the Defendant on behalf of themselves and all others similarly situated because of Defendant’s unlawful deprivation of Plaintiffs’ rights to overtime compensation. 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.*

3. At all times material herein, Plaintiffs and all those similarly situated have been “employees” within the meaning of the FLSA. 29 U.S.C. § 203(e)(1).

4. Plaintiffs have given their written consent to be party-plaintiffs in this action, pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Collective Action Complaint as Exhibit A.

5. Defendant is a body corporate and political subdivision of the State of Florida, and at all times material herein, Defendant has been a “public agency” and “employer” within the

meaning of the FLSA, 29 U.S.C. §§ 203(x), 203(d). Defendant employs or employed Plaintiffs and is located within the Middle District of Florida and within Marion County, Florida. Defendant has a principal office and place of business located at 601 SE 25th Ave., in Ocala, Florida 34471.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

7. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391 and Local Rule 1.02.

FACTS

8. Since September 17, 2016, as well as before, Plaintiffs and all others similarly situated have worked for the Defendant Marion County, within Marion County Fire and Rescue, at the rank of Captain.

9. Within the last three years, and continuing to date, while working at the rank of Captain, Plaintiffs' primary job duty has been, and remains, to protect and serve the public by engaging in fire suppression, emergency response and related non-exempt activities. While on the scene of fire calls, the Plaintiffs, with their crew, engage in the control, suppression, and extinguishment of fires and the rescue of fire or accident victims. Plaintiffs are also required to participate in the same physical fitness program and complete all required training as the other members of the crew on which they serve.

10. While working as Captains on behalf of Defendant, Plaintiffs, as well as all others similarly situated, are assigned to work, and in fact do work, a regular and recurrent schedule of 24 hours on-duty, followed by 48 hours off-duty. As a result, Plaintiffs are suffered or permitted to perform at least 48 or 72 hours of regularly scheduled work each week. Furthermore, this

schedule results in Defendant suffering or permitting Plaintiffs to perform at least 120 hours of regularly scheduled work in two of every three 14-day periods. In addition, Plaintiffs frequently work extra shifts, outside of their regular schedule. Plaintiffs are therefore regularly assigned to work, and do work, in excess of 40 hours per week, as well as in excess of 53 hours per week, in excess of 106 hours in a 14-day period, and in excess of 212 hours in a 28-day period.

11. Defendant misclassifies Plaintiffs as “exempt” employees and unlawfully fails to pay any overtime premiums for their overtime work. Instead, Defendant pays Plaintiffs a static biweekly wage and, for unscheduled shifts outside Plaintiffs’ regular schedule, a straight hourly rate. Further, Defendant only pays that straight hourly rate for unscheduled work that meets or exceeds four hours.

12. Defendant, at all times material herein, has failed and continues to fail to pay Plaintiffs who work in the position of Captain overtime premium pay at the rate of one and one-half times their regular rate of pay when it suffers or permits them to work in excess of 40 hours in a week, in excess of 53 hours in a week, in excess of 106 hours in a 14-day period, or in excess of 212 hours in a 28-day period.

13. Defendant, at all times material herein, has known and should have known that uncompensated overtime work was being performed by Plaintiffs and all others similarly situated, because of, for example, Defendant’s established policies and procedures, work schedules, and observation of Plaintiffs. Therefore, Defendant's actions in refusing to provide Plaintiffs the rights and protections provided under the FLSA are willful in that Defendant knew its pay practices with respect to its Captains was prohibited by the FLSA or, at the very least, showed a reckless disregard for the FLSA.

COUNT I
VIOLATION OF SECTION 207(a) OF THE FAIR LABOR STANDARDS ACT

14. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 13 of this Complaint.

15. During the times that Plaintiffs and those similarly situated have worked in excess of 40 hours in a workweek, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(a).

16. By failing to pay the Plaintiffs and others similarly situated the overtime pay required under the law, Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs and those similarly situated have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

17. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to Plaintiffs an amount that has not yet been precisely determined. The employment and work records for Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of Defendant and Plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to Plaintiffs and other employees similarly situated from which the amount of Defendant's liability can be ascertained.

18. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

19. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT II
VIOLATION OF SECTION 207(k) OF THE FAIR LABOR STANDARDS ACT

20. Plaintiffs re-allege, and incorporate by reference herein, paragraphs 1 through 19 of this Complaint.

21. Under the U.S. Department of Labor's regulations applicable to fire fighters covered under 29 U.S.C. §207(k), (29 C.F.R. §553.230), an employer must pay overtime compensation to such employees at a rate not less than one and one-half times their regular rate of pay for hours of work in excess of 53 hours in a 7-day work period, in excess of 106 hours in a 14-day work period, or in excess of 212 hours in a maximum 28-day work period (or in excess of a proportionate number of hours for work periods between 7 and 28 days).

22. During the times that Plaintiffs and those similarly situated have worked in excess of 53 hours per workweek, 106 hours per 14-day period, and 212 hours per 28-day period, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(k) and 29 C.F.R. §553.230.

23. By failing to pay the Plaintiffs and others similarly situated the overtime pay required under the law, Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material

herein, Plaintiffs and those similarly situated have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

24. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to Plaintiffs an amount that has not yet been precisely determined. The employment and work records for Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of Defendant and Plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to Plaintiffs and other employees similarly situated from which the amount of Defendant's liability can be ascertained.

25. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

26. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and applicable law, all plaintiffs hereby demand that their claims be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, all plaintiffs, on their own behalf and on behalf of others similarly situated, pray that this Court:

(a) Enter judgment declaring that the defendant has willfully and wrongfully violated its statutory obligations under federal law and deprived each of the plaintiffs of his/her rights;

(b) Order a complete and accurate accounting of all the unpaid compensation to which the plaintiffs are entitled;

(c) Award plaintiffs compensatory relief in the form of unpaid compensation and liquidated damages equal to their unpaid compensation;

(d) Award plaintiffs interest on their unpaid compensation;

(e) Award plaintiffs their reasonable attorneys' fees to be paid by the defendant, and the costs and disbursements of this action; and

(f) Grant such other relief as may be just and proper.

Respectfully submitted,

/s/ Paul Donnelly

Paul Donnelly
Florida Bar No. 813613
DONNELLY & GROSS
2421 NW 41st Street, Suite A-1
Gainesville, FL 32606
(352)374-4001 Phone
(352)374-4046 Fax
paul@donnellygross.com

Trial Counsel

/s/ Sara L. Faulman

Sara L. Faulman (*Appearing by Local Rule 2.02(a)*)
McGILLIVARY STEELE ELKIN LLP
1101 Vermont Avenue, N.W.
Suite 1000
Washington, DC 20005
Phone: (202) 833-8855
slf@mselectorlaw.com

/s/ John W. Stewart

John W. Stewart (*Appearing by Local Rule 2.02(a)*)
McGILLIVARY STEELE ELKIN LLP
1101 Vermont Avenue, N.W.
Suite 1000
Washington, DC 20005
Phone: (202) 833-8855
jws@mselectorlaw.com


Counsel for Plaintiffs

EXHIBIT A

**CONSENT TO SUE
REQUEST TO BECOME PARTY-PLAINTIFF**

I hereby consent to become a party-plaintiff in a lawsuit concerning my employment with Marion County, Florida, as a Captain, to enforce my rights and recover overtime wages and other relief under the Fair Labor Standards Act.

Joseph Amigore
Print Name Clearly

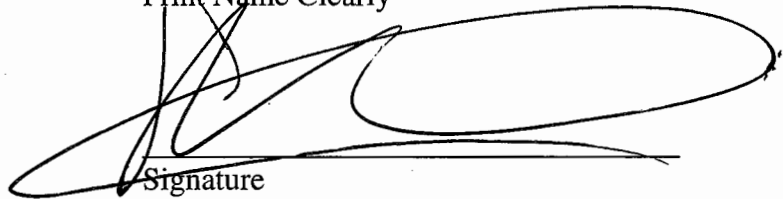

Signature

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SCOTT H. CHAPPELL

Print Name Clearly

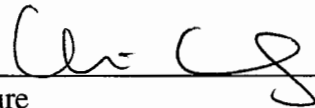
A handwritten signature in black ink, appearing to read "Scott H. Chappell", written over a horizontal line. The signature is stylized and somewhat cursive.

Signature

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Chris Cooksey
Print Name Clearly

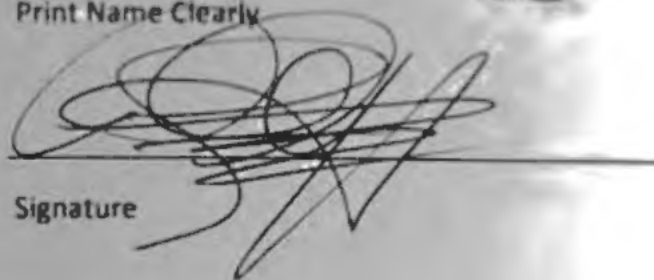

Signature

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Pamela Driggers

Print Name Clearly



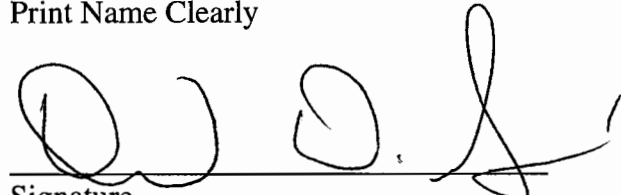
Signature

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DANIEL D. GARCIA

Print Name Clearly

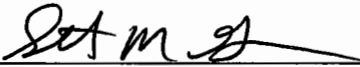


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Scott M. Gagen
Print Name Clearly


Signature

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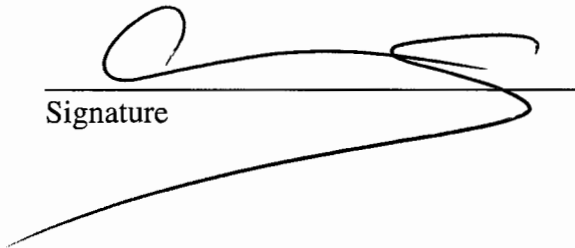
Justin W. Harrington
Print Name Clearly


Signature

**CONSENT TO SUE
REQUEST TO BECOME PARTY-PLAINTIFF**

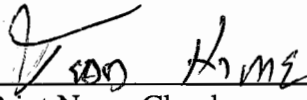
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Christopher H. Hays
Print Name Clearly


Signature

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Print Name Clearly

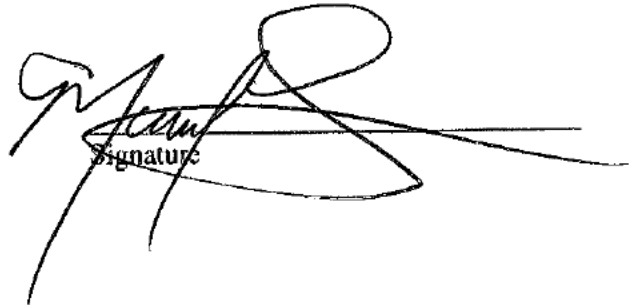


Signature

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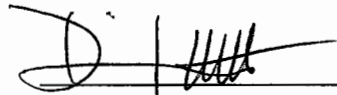
MURREL LIVERMAN
Print Name Clearly


Signature

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David Clark Mills
Print Name Clearly


Signature

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John M. Nowery
Print Name Clearly

John M. Nowery
Signature

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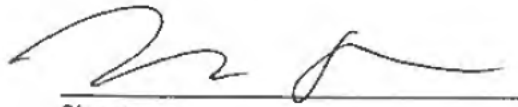
Thomas Reeves
Print Name Clearly


Signature

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Miguel Rioco
Print Name Clearly


Signature

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Joseph Frank Rinaudo II
Print Name Clearly


Signature

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CHRIS TRUBELHORN

Print Name Clearly



Signature

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Daniel Garcia, et al. (see attached for complete list)
(b) County of Residence of First Listed Plaintiff Marion County (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number) (see attached)

DEFENDANTS Marion County, Florida
County of Residence of First Listed Defendant Marion County (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 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 4 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)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act (checked), 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding (checked)
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act, 29 U.S.C. 201, et seq.
Brief description of cause: Action to recover unpaid overtime wages and related relief, under the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes (checked) No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE James S. Moody, Jr. DOCKET NUMBER 5:19-cv-00193-JSM-PRL

DATE 09/18/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Paul Donnelly

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

I(a): Plaintiffs:

Daniel D. Garcia
Joseph L. Amigliore
Scott H. Chappell
Chris Cooksey
Pamela Driggers
Scott M. Gragen
Justin W. Harrington
Christopher Hayes
Todd Hime
Murrel Liverman
David C. Mills
John M. Nowery
Thomas Reeves
Joseph Rinaudo, II
Miguel Rioseco
Chris Trubelhorn

I(c): Attorneys:

Sara L. Faulman (Appearing Per Local Rule 2.02(a))
John W. Stewart (Appearing Per Local Rule 2.02(a))
MCGILLIVARY STEELE ELKIN LLP
1101 Vermont Avenue, N.W.
Suite 1000
Washington, DC 20005
Phone: (202) 833-8855
slf@mnelaborlaw.com
jws@mnelaborlaw.com

Paul Donnelly
Florida Bar No. 813613
DONNELLY & GROSS
2421 NW 41st Street, Suite A-1
Gainesville, FL 32606
(352)374-4001 Phone
(352)374-4046 Fax
paul@donnellygross.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

DANIEL GARCIA, et al.

Plaintiff(s)

v.

MARION COUNTY, FLORIDA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Marion County, Florida
c/o Chairman, Board of County Commissioners
601 S.E. 25th Avenue
Ocala, Florida 34471

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sara L. Faulman
John W. Stewart
McGILLIVARY STEELE ELKIN LLP
1101 Vermont Avenue, N.W., Ste 1000
Washington, DC 20005
202-833-8855
slf@mselaborlaw.com; jws@mselaborlaw.com

Paul Donnelly
DONNELLY & GROSS
2421 NW 41st St, Suite A-1
Gainesville, Florida 32606
352-374-4001
paul@donnellygross.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: