

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

|  |   |
|--|---|
| CARLOS HELIEL VAIL LUX, ALVARO             | ) |
| GAMALIEL VAIL LUX, and all others          | ) |
| similarly situated under 29 U.S.C. 216(b), | ) |
|  | ) |
| Plaintiffs,                                | ) |
| vs.  | ) |
|  | ) |
| RCH LAWN MAINTENANCE LLC,                  | ) |
| SETH HOROWYTZ,                             | ) |
|  | ) |
| Defendants.                                | ) |
| _____                                      | ) |

**COMPLAINT UNDER 29 U.S.C. 201- 216 OVERTIME WAGE VIOLATIONS**

Plaintiffs, CARLOS HELIEL VAIL LUX and ALVARO GAMALIEL VAIL LUX, on behalf of themselves and all others similarly situated under 29 U.S.C. 216(b), through undersigned counsel, files this Complaint against Defendants, RCH LAWN MAINTENANCE LLC, and SETH HOROWYTZ, and allege:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. §§ 201-216.
2. The Plaintiffs were residents of Dade County, Florida at the time that this dispute arose.
3. The Defendant RCH LAWN MAINTENANCE LLC, is a limited liability company that regularly transacts business within Dade County. Upon information and belief, the Defendant Corporation was the FLSA employer for Plaintiffs’ respective period of employment (“the relevant time period”).
4. The individual Defendant SETH HOROWYTZ is a corporate officer and/or owner and/or manager of the Defendant Corporation who ran the day-to-day operations of the Corporate Defendant for the relevant time period and was responsible for paying Plaintiffs’ wages for

the relevant time period and controlled Plaintiffs' work and schedule and was therefore Plaintiffs' employer as defined by 29 U.S.C. 203 (d).

5. All acts or omissions giving rise to this dispute took place in Dade County.

### **COUNT I. FEDERAL OVERTIME WAGE VIOLATION**

6. This action arises under the laws of the United States. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendants have employed several other similarly situated employees like Plaintiffs who have not been paid overtime and/or minimum wages for work performed in excess of 40 hours weekly from the filing of this complaint back three years.
7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).
8. 29 U.S.C. § 207 (a) (1) states, "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."
9. Plaintiff CARLOS HELIEL VAIL LUX worked for Defendants as a lawn maintenance worker from on or about May 1, 2015 through on or about November 30, 2016.
10. Plaintiff ALVARO GAMALIEL VAIL LUX worked for Defendants as a lawn maintenance worker from on or May 1, 2015 through on or about November 30, 2016.

11. Defendant's business activities involve those to which the Fair Labor Standards Act applies.

Both the Defendant's business and the Plaintiffs' work for the Defendants affected interstate commerce for the relevant time period. Plaintiffs' work for the Defendants affected interstate commerce for the relevant time period because the materials and goods that Plaintiffs used on a constant and/or continual basis and/or that were supplied to him by the Defendants to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiffs' use of the same. The Plaintiffs' work for the Defendants was actually in and/or so closely related to the movement of commerce while he worked for the Defendants that the Fair Labor Standards Act applies to Plaintiffs' work for the Defendants.

12. Additionally, Defendants regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendant's business an enterprise covered under the Fair Labor Standards Act.

13. Upon information and belief, the Defendant Corporation had gross sales or business done in excess of \$500,000 annually for the years 2014 and 2015.

14. Upon information and belief, the Defendant Corporation's gross sales or business done exceeded \$375,000 for the first nine months of the year 2016 and is expected to exceed \$500,000 for the year 2016.

15. Upon information and belief, Defendants own approximately two (2) other lawn service and maintenance companies throughout South Florida and are joint enterprises as defined by 29 U.S.C. 203(r) as the related activities between Defendants and approximately two (2) other lawn service and maintenance companies throughout South Florida are performed through unified operation and/or common control, are being done for a common business purpose and

there is cross-utilization of employees during the same work weeks simultaneously benefiting all Companies which are operated by the same company officers for a common business purpose.

16. Individual Defendant SETH HOROWYTZ was Plaintiffs' individual employer pursuant to 29 U.S.C. §203(d) as set forth above.

17. Between the period of on or about May 1, 2015 through on or about November 30, 2016, Plaintiff CARLOS HELIEL VAIL LUX worked an average of 48 hours a week for Defendants, of which an average of 8 overtime hours a week were spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks, and was paid an average of \$12.00 per hour. Plaintiff was never paid anything at all for an average of 8 overtime hours a week spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks as required by the Fair Labor Standards Act. Plaintiff therefore claims the time-and-a-half overtime rate for an average of 8 overtime hours that he worked above 40 in a week spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks.

18. Between the period of on or about May 1, 2015 through on or about November 30, 2016, Plaintiff ALVARO GAMALIEL VAIL LUX worked an average of 48 hours a week for Defendants, of which an average of 8 overtime hours a week were spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks,

and was paid an average of \$13.00 per hour. Plaintiff was never paid anything at all for an average of 8 overtime hours a week spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks as required by the Fair Labor Standards Act. Plaintiff therefore claims the time-and-a-half overtime rate for an average of 8 overtime hours that he worked above 40 in a week spent loading and unloading tools/equipment on and off Defendants' trucks and travelling to and from Defendants' jobsites and to and from Defendants' place of business on loaded work trucks.

19. Defendants willfully and intentionally refused to pay Plaintiffs' overtime wages as required by the Fair Labor Standards Act as Defendants knew of the overtime requirements of the Fair Labor Standards Act and recklessly failed to investigate whether Defendants' payroll practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiffs these wages since the commencement of Plaintiffs' employment with Defendants for the time period specified above.

Wherefore, the Plaintiffs request double damages and reasonable attorney fees from Defendants, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for all overtime wages still owing from Plaintiffs' entire employment period with Defendants or as much as allowed by the Fair Labor Standards Act along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. *The Plaintiffs request a trial by jury.*

Respectfully Submitted,

J.H. Zidell, Esq.  
J.H. Zidell, P.A.

Attorney For Plaintiffs  
300 71<sup>st</sup> Street, Suite 605  
Miami Beach, Florida 33141  
Tel: (305) 865-6766  
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Email: ZABOGADO@AOL.COM

By: \_\_\_/s/ J.H. Zidell \_\_\_\_\_  
J.H. Zidell, Esq.  
Florida Bar Number: 0010121

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UNITED STATES DISTRICT COURT

for the  
Southern District of Florida

CARLOS HELIEL VAIL LUX, ALVARO )  
GAMALIEL VAIL LUX, and all others )  
similarly situated under 29 U.S.C. 216(b), )

Plaintiffs, )

vs. )

RCH LAWN MAINTENANCE LLC, )  
SETH HOROWYTZ, )

Defendants. )

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**SUMMONS IN A CIVIL ACTION**

To: (Defendant's name and address)  
RCH LAWN MAINTENANCE LLC  
Registered Agent: Seth Horowitz  
9858 Glades Road, #163  
Boca Raton, FL 33434

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:

J.H. Zidell, Esq.  
J.H. Zidell P.A.  
300 71<sup>ST</sup> Street, Suite 605  
Miami Beach, Florida 33141

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: \_\_\_\_\_

\_\_\_\_\_

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UNITED STATES DISTRICT COURT

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CARLOS HELIEL VAIL LUX, ALVARO )  
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SETH HOROWYTZ, )

Defendants. )

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To: (Defendant's name and address)

SETH HOROWYTZ  
9858 Glades Road, #163  
Boca Raton, FL 33434

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J.H. Zidell, Esq.  
J.H. Zidell P.A.  
300 71<sup>ST</sup> Street, Suite 605  
Miami Beach, Florida 33141

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: \_\_\_\_\_

\_\_\_\_\_



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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS LUX, CARLOS HELIEL VAIL, ALVARO GAMALIEL VAIL LUX, and all others similarly DEFENDANTS RCH LAWN MAINTENANCE LLC, SETH HOROWYTZ,

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number) J.H. Zidell, P.A. 300 71st St., Suite 605, Miami Beach, FL 33141 phone: 305-865-6766

(d) Check County Where Action Arose: [X] MIAMI-DADE [ ] MONROE [ ] BROWARD [ ] PALM BEACH [ ] MARTIN [ ] ST. LUCIE [ ] INDIAN RIVER [ ] OKEECHOBEE [ ] HIGHLANDS

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

1 U.S. Government Plaintiff [X] 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant [ ] 4 Diversity (Indicate Citizenship of Parties in Item III) Citizen of This State [ ] 1 Citizen of Another State [ ] 2 Citizen or Subject of a Foreign Country [ ] 3 PTF DEF 1 1 Incorporated or Principal Place of Business In This State [ ] 4 [ ] 4 2 2 Incorporated and Principal Place of Business In Another State [ ] 5 [ ] 5 3 3 Foreign Nation [ ] 6 [ ] 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only) [X] 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 [ ] 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [ ] YES [X] NO b) Related Cases [ ] YES [X] 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 USC §§ 201-216 LENGTH OF TRIAL via 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: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE December 5, 2016 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [RCH Lawn Maintenance Clipped with Class Action Over Unpaid Overtime](#)

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