

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

**MICHAEL BAIL, on behalf of  
himself and all others similarly situated,**

**Plaintiff,**

Case Number \_\_\_\_\_

vs.

**PASCO EXTERIOR COATINGS, INC.,  
ROTHER A. CULP & KATHLEEN CULP,**

**Defendants.**

\_\_\_\_\_ /

**VERIFIED COMPLAINT & JURY DEMAND**

The Plaintiff, Michael Bail (“Bail”) on behalf of himself and all other similarly situated, sues Pasco Exterior Coatings, Inc. (“PEC”), Rother A. Culp (“RAC”) and Kathleen S. Culp (“KC”), collectively referred to as Defendants for violating the overtime provision of the Fair Labor Standards Act (FLSA or Act), 29 U.S.C. §§ 207(a)(1) and 15(a)(2). This action is brought pursuant to 29 U.S.C. § 216(b). In support of this verified complaint Bails states as follows:

**I. Nature of Suit**

1. The FLSA was passed by Congress in 1938. The principal congressional purpose in enacting the FLSA was to protect all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to maintenance of minimum standards of living necessary for health, efficiency, and general well-being of workers. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739, 101 S.Ct. 1437, 1444 (1981). The liquidated damage provision of the FLSA constitutes a congressional recognition that failure to pay statutory minimum on time may be so

detrimental to maintenance of minimum standard of living necessary for health, efficiency, and general well-being of workers and to the free flow of commerce, that double payment must be made in event of delay in order to insure restoration of worker to that minimum standard of well-being. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707-08, 65 S.Ct. 895, 902 (1945).

2. Defendants violated the FLSA by failing to pay employees for all hours worked at the rates required by the FLSA. Defendants failed to pay all overtime wages to at least thirty (30) individuals who suffered or were permitted to work for the enterprise over the past three years. The employees worked as painters for residential, commercial and industrial projects. Defendants failed to pay the class time and half their regular pay for all hours worked over forty for one or more work weeks. The employees labored for an hourly wage. Defendants paid the class members for approximately thirty hours of work each week through payroll and usually paid cash monies at straight time for hours over thirty.

## **II. Parties**

3. Bail is an individual who resides in Pasco County, Florida and has been employed by Defendants within the meaning of the FLSA. Bail consents to be a party in this action by signing this verified complaint.

4. PEC is a domestic corporation that conducts business in among others, Pasco County, Florida.

5. RAC is an individual who conducts business in Pasco County, Florida. PAC exercised control over Bail and all similarly situated employees in regards to pay, the number of hours worked and job duties.

6. KC is an individual who conducts business in Pasco County, Florida. KC exercised control over Bail and all similarly situated employees in regards to pay, the number of hours worked and job duties.

### **III. Jurisdiction & Venue**

7. This Court has jurisdiction over Defendants, because the Defendants conduct business in Florida.

8. The Court has jurisdiction over this complaint pursuant to 28 U.S.C. § 1331 and the FLSA, 29 U.S.C. § 201, *et seq.*

9. Venue is proper in the Middle District of Florida because Defendants reside in Pasco County, Florida.

### **IV. Employer-Employee Relationship**

10. The FLSA stretches the meaning of employee to cover some parties who might not qualify as such under a strict application of traditional agency law principles. *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992).

11. The definition of employ is broad. *Rutherford Ford Corp. v. McComb*, 331 U.S. 722, 728, 67 S.Ct. 1473, 1476 (1947).

12. In fact, it is clear that the definition of employment as it relates to the FLSA is the broadest definition that has ever been included in one act. *Shultz v. Hinojosa*, 432 F.2d 259, 264 (5th Cir. 1970).

13. Employment under the FLSA is as much a matter of circumstance as it is of consensual agreement. A relationship may exist between two parties whether or not either or both of them give it express recognition. *Gulf King Shrimp Co. v. Wirtz*, 407 F.2d 508, 512 (5th Cir. 1969).

14. Work not requested but suffered or permitted is work time. 29 C.F.R. § 785.11.

15. Bail and all similarly situated were required, permitted or allowed to work for Defendants as laborers performing painting services.

16. The work of Bail and all similarly situated was an integrated unit of production under such circumstances that Bail and all similarly situated workers were employees of Defendants.

17. Bail and all similarly situated were economically dependent on Defendants.

18. Bail and all similarly situated suffered or were permitted to work for Defendants, during the past three (3) years, as defined by 29 U.S.C. § 203(g).

19. Defendants are considered the employers of Bail and all similarly situated as defined by 29 U.S.C. § 203(d).

20. At all material times, Defendants have been an enterprise within the meaning of § 3(r) of the Act.

21. At all material times, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of § 3(s)(1) of the Act, in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

**V. Factual Allegations**

22. Defendants provide painting services to residential, commercial and industrial clients throughout the region.

23. Defendants paid Bail and all others similarly situated the same hourly rate for all hours worked.

24. Defendants' official payroll records do not accurately reflect all time records for Bail and all similarly situated.

25. Defendants' failure to keep accurate records casts the burden on Defendants to disprove the testimony of Bail and all similarly situated employees regarding the number of hours they suffered or were permitted to work. *See, Shultz v. Hinojosa*, 432 F.2d 259, 261 (5th Cir. 1970).

26. Defendants, at the very least, had the opportunity through reasonable diligence to acquire knowledge that Bail and all similarly situated were not being paid time and one half their regular rates of pay for hours worked over forty (40) in a workweek.

27. Defendants accepted the work of Bail and all similarly situated employees.

28. Bail and all similarly situated worked hours over forty in a workweek and were not paid for all hours worked over forty at a rate of one and half their regular rates.

29. All painters for Defendants are similarly situated.

30. All hourly paid painters for Defendants are similarly situated.

31. All of Defendants' employees who were paid hourly and performed painting services for Defendants are similarly situated.

## VI. Collective Action Allegations

32. Bail and the class members performed the same or similar job duties as one another in that they provided painting services for Defendants at anytime within the past three (3) years without receiving all overtime pursuant to 29 U.S.C. § 207(a)(1). Bail and the class members were subjected to the same pay provisions in that they suffered or were permitted to work overtime but not paid at the correct rate for all hours worked. Thus, the class members are owed overtime wages for the same reasons as Bail.

33. Defendants' failure to compensate employees for all overtime wages as required by the FLSA results from a policy or practice of failure to assure correct time keeping records and payment of overtime in accordance to the FLSA . This policy or practice was applicable to Bail and the class members. Application of this policy or practice does not depend on the personal circumstances of Bail or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime to Bail applies to all class members. Accordingly, the class members are properly defined as: all hourly paid employees who painted as part of their job while working for Defendants during anytime within the previous three (3) years of this complaint and who were not paid for all overtime worked at the correct rate pursuant to 29 U.S.C. § 207(a)(1).

34. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay all overtime with respect to Bail and the class members.

35. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c)

Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

**VII. Failure to pay wages in accordance with the FLSA**

36. During the relevant period, Defendants violated § 7(a)(1), § 11(c) and § 15(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for one or more workweeks without compensating such employees for all their work at a rate of one and half their regular rate for all hours worked over forty in a workweek. Defendants have acted willfully in failing to pay Bail and the class members in accordance with the law.

Wherefore, Bail demands trial by jury, payment of his and all class members overtime wages at the correct rate pursuant to 29 U.S.C. § 207(a)(1), an equal amount of liquidated damages pursuant to 29 U.S.C. § 216(b), and reasonable attorneys' fees and costs for all time worked by the attorneys of Morgan & Morgan in prosecuting this case pursuant to 29 U.S.C. § 216(b).

Respectfully submitted this 3rd day of March 2010,



Bernard R. Mazaheri  
Florida Bar Number 643971  
Morgan & Morgan  
20 N. Orange Ave., 16th Floor  
Orlando, FL 32801  
Telephone - (407)420-1414  
Email -BMazaheri@forthepeople.com

I, Michael Bail, consent to join this FLSA lawsuit and hereby declare all declarations and/or allegations made in this verified complaint, consisting of eight (8) pages are made under oath and from personal knowledge

Michael Bail  
Michael Bail

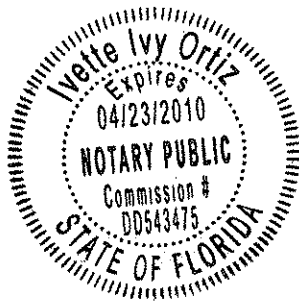
State of Florida

County of Orange

BEFORE ME, the undersigned authority, on this day, personally appeared Michael Bail, who being first duly sworn, deposes and says that he has read this verified complaint, knows the contents of same, and to the best of his knowledge and belief, the same are true and correct. Mr. Bail was personally identified.

Sworn and subscribed before me on this 3rd day of March 2010,

NOTARY PUBLIC



Ivette Ivy Ortiz

Signature of Person Taking Acknowledgment

Print Name: IVETTE IVY ORTIZ

Title: Notary Public

Serial No. (If any):

Commission Expires: 4/23/2010