

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2017 MAR 27 PM 2: 38

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

ELIJAH JOHNSON, individually,
and on behalf of all others similarly situated,

Plaintiffs,

vs.

2:17-cv-171-FJM-JRCM

SIMON'S LAWN CARE, INC., a
Florida Profit Corporation;
and A.J. SIMON, individually.

Defendants,

_____ /

COMPLAINT

Plaintiff, ELIJAH JOHNSON, by and through his undersigned counsel, files this Complaint against the Defendants, SIMON'S LAWN CARE INC., and A.J. SIMON, individually, collectively "Defendants", and hereby sets forth this collective action for violation of the Fair Labor Standards Act under 29 U.S.C. § 216(b) and states as follows:

Introduction

1. This is an action brought pursuant to the Fair Labor Standards Act, as amended, (29 U.S.C. §201 et seq., hereinafter called the "FLSA") to recover unpaid overtime compensation, liquidated damages, and reasonable attorney's fees and costs.

Jurisdiction and Venue

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

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the events or omissions giving rise to the claims alleged herein occurred in Lee County, Florida.

Parties

4. Plaintiff, ELIJAH JOHNSON, was and is a citizen of the State of Florida, domiciled in Lee County, Florida and was employed by the Defendants. Specifically, Plaintiff performed lawn care work for the Defendants.

5. At all times material hereto Defendant SIMON'S LAWN CARE, INC. was and is a Florida Profit Corporation, and is engaged in business in Lee County, Florida.

6. At all times material hereto Defendant A.J. SIMON is a resident of Lee County, Florida.

7. At all times material, A.J. SIMON was an individual who owned and/or operated SIMON'S LAWN CARE, INC. and who regularly exercised the authority to (1) hire and fire employees (2) determine work schedules for employees, and (3) control the finances and operations of SIMON'S LAWN CARE, INC.

8. By virtue of A.J. SIMON having held and exercised the authority to (1) hire and fire employees (2) determine work schedules for employees, and (3) control the finances and operations of SIMON'S LAWN CARE, INC., A.J. SIMON is an employer as defined by 29 U.S.C. §201 et seq.

9. Plaintiff was engaged in commerce within the meaning of §6 and §7 of the FLSA.

10. ELIJAH JOHNSON was an employee of the Defendants within the meaning of the FLSA.

11. Defendants were Plaintiff's employers within the meaning of the FLSA at all times material to this action.

12. At all times material hereto, Defendant, SIMON'S LAWN CARE, INC., was and continues to be Florida a corporation engaged in business in Florida with the annual gross revenue of the Defendant business enterprises is in excess of five hundred thousand dollars (\$ 500,000.00) per annum during the three years preceding the filing of this Complaint.

13. At all times material, Defendants were authorized to do business in the State of Florida.

14. At all times material hereto, Defendant had two or more employees handling, selling, or otherwise working on goods or materials that had been moved in or procured for commerce such as: vehicles, power tools, and other lawn care equipment manufactured out of state or overseas.

15. At all times material and relevant to this action, the work performed by the Plaintiff was directly essential to the business performed by the Defendants.

General Allegations

16. This action is to include each and every employee who worked for the Defendant at any time in the past three years.

17. From approximately June 2013 to July 2015, Defendants hired Plaintiff as an employee to perform lawn care and assigned him as a foreman.

18. Plaintiff's job duties included, but were not limited to, landscaping and detailing a set number of lawns per day as set forth by the Defendants.

19. Throughout his employment, ELIJAH JOHNSON was paid a flat daily regard, regardless of how many hours he worked.

20. In all, or nearly all, of his weeks of employment with the Defendants, ELIJAH JOHNSON worked in excess of forty (40) hours in a work week.

21. From the beginning of ELIJAH JOHNSON'S employment to present, Defendants failed to compensate ELIJAH JOHNSON at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty (40) hours per work week.

22. Specifically, the practice in place was that the Defendants insisted on only paying the daily rate with no additional amounts as to an overtime premium, which led to a failure to pay overtime.

23. Plaintiff, and all others who are similarly situated, should be compensated at the rate of one and one-half times the rate of regular pay for all hours worked in excess of forty (40) hours per work week, as required by the FLSA.

24. The majority of Plaintiff's pay and time records are in the Defendants' possession.

25. The additional persons who may become plaintiffs in this action also worked for the Defendants as flat, daily rated employees, who worked under the same conditions, and pursuant to the policies, practices, and procedures applicable to Plaintiff, were denied proper overtime compensation for overtime hours due to these policies, practices, and procedures.

26. Plaintiff is personally aware of other similarly situated employees who have been subjected to the above described policy since at least June 2013.

27. Defendants have violated 29 U.S.C. § 207 from at least June 2013 to present in that:

- a. Plaintiff, and those similarly situated, worked in excess of forty (40) hours in one work week for the period in which they were employed with the Defendants;
- b. No payments or provisions for payment have been made by the Defendants to properly compensate ELIJAH JOHNSON, and those similarly situated at the statutory rate of one and one-half times the regular rate for all hours worked in

excess of forty (40) per work week as provided by the FLSA due to the above described policies and practices, and

c. Defendants have failed to maintain proper time records as mandated by the FLSA.

28. Upon information and belief, Defendants' failure and/or refusal to properly compensate the Plaintiff and those similarly situated, as the rates required by the FLSA was willful.

29. Defendants failed and/or refused to properly disclose or apprise Plaintiff of his rights under the FLSA.

30. Plaintiff has retained the firm of VILES & BECKMAN, LLC to represent Plaintiff in the litigation and has agreed to pay the firm a reasonable fee for its services.

COUNT 1: RECOVERY OF OVERTIME COMPENSATION

31. Plaintiff re-alleges paragraphs 1-30 above as though fully set forth herein.

32. From the beginning of his employment in June 2013 to approximately July 2015, Plaintiff worked in excess of forty (40) hours in one or more work weeks for which the Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

33. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours in a work week.

34. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by their failure to compensate Plaintiff, and those similarly situated, at the statutory rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours per work week when they knew, or should have known, same was and is due.

35. Defendants failed to properly disclose or apprise Plaintiff of Plaintiff's rights under the FLSA.

36. Due to the intentional, willful, and unlawful acts of the Defendants, Plaintiff and those similarly situated, suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

37. Based upon information and belief, the employees and former employees of Defendants similarly situated to the Plaintiff were not paid proper overtime for hours worked in excess of forty (40) hours in one or more work weeks because Defendants have failed to properly pay Plaintiff proper overtime wages at time and one-half of the lawful regular rate of pay for such hours, pursuant to a policy, plan, or decision equally applicable to similarly situated employees.

38. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 27 U.S.C. § 216(b).

WHEREFORE, Plaintiff, ELIJAH JOHNSON, on behalf of himself and all others similarly situated, prays for relief as follows:

a. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Sue pursuant to U.S.C. §216(b);

b. Designation of Plaintiff, as Representative Plaintiff of the putative members of the FLSA representative action;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, et seq.;

- d. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- e. An award of damages for overtime compensation due for the Plaintiff and the putative members of the class, including liquidated damages, to be paid by Defendants;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

DEMAND FOR JURY TRIAL

Plaintiff does hereby demand a Jury Trial and all issues and claims so triable.

Respectfully submitted this 27th day of March, 2017.

VILES & BECKMAN, LLC
Attorneys for Plaintiff
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Fort Myers, Florida 33919
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Email: Maria@vilesandbeckman.com
Secondary: A.Osborne@vilesandbeckman.com

By: _____

Maria R. Alaimo Esquire
Florida Bar Number: 103870

JS 44 (Rev. 11/15)

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

ELIJAH JOHNSON, individually, and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Maria R. Alaimo, Esq., Viles & Beckman, LLC
6350 Presidential Court, Suite A, Fort Myers, FL 33919 (239)-334-3933

DEFENDANTS

SIMON'S LAWN CARE, INC., a Florida Corporation; and
A.J. SIMON, individually

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)

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 MIDDLE DISTRICT OF FLORIDA
 FORT MYERS, FLORIDA

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)

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

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Recopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 207, 216(b)

Brief description of cause:
Unpaid wages

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 No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/27/17

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FEMD10725

2:17-CV-171-ETH-29CM

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Simon's Lawn Care Named in Wage and Hour Lawsuit](#)
