

FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

2017 DEC 12 AM 11:43

**OSVALDO LUNA, individually and on  
behalf of other similarly situated,**

**Plaintiff,**

**v.**

Case No.: 6:17-cv-2124-ORL-22 GJK

**F S PROPERTY MAINTENANCE,  
INC., and FRANK SCHULZ,  
individually,**

**Defendants.**

**COMPLAINT & DEMAND FOR JURY TRIAL**

Plaintiff, OSVALDO LUNA, individually and on behalf of other similarly situated (hereinafter "Plaintiff"), by and through the undersigned attorney, sues the Defendants, F S PROPERTY MAINTENANCE, INC., and FRANK SCHULZ, individually, (collectively referred to as "Defendants"), and alleges as follows:

**INTRODUCTION**

1. This is an action by the Plaintiff against his former employers for overtime wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 206 and 29 U.S.C. § 216(b) (the "FLSA"), and any other relief available.

2. This action is brought under the FLSA to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

**PARTIES**

3. During Plaintiff's employment with Defendants, he served as a laborer and as a manager and performed related activities at their place of business located at 3314 Lukas Cove, Orlando, FL 32820.

4. Defendant, F S PROPERTY MAINTENANCE, INC., is a Florida Corporation which operates and conducts business in the Orlando (Central Florida), Orange County, Florida, and is therefore within the jurisdiction of this Court.

5. Defendant, FRANK SCHULZ, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, F S PROPERTY MAINTENANCE, INC., and resides in the State of Florida. This Court has personal jurisdiction over this Defendant because said Defendant is a resident of the State of Florida.

**JURISDICTION**

6. This action arises under the FLSA, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 206 and 29 U.S.C. § 216(b).

**VENUE**

7. The venue of this Court over this controversy is proper based upon the claim arising in Orlando (Central Florida), Orange County, Florida.

**FACTS**

8. Defendant, FRANK SCHULZ, is the corporate officer, owner and acting manager of corporate Defendant, F S PROPERTY MAINTENANCE, INC., with the power to: (1) hire and fire Plaintiff; (2) supervise and control Plaintiff's work schedule or

conditions of employment; (3) determine Plaintiff's rate and method of payment; and (4) maintain employment records.

9. Defendants employed Plaintiff at their business located at 3314 Lukas Cove, Orlando, FL 32820, within the relevant time period (2016 – 2017).<sup>1</sup>

10. Plaintiff worked for Defendants without being paid any overtime pay, premium rate of time and one-half his regular rate of pay, for all hours worked in excess of forty (40) hours within a work week.

11. Specifically, Defendants paid regular rate of pay for regular hours worked and a fixed pay for work performed during the weekends.

12. Defendants paid Plaintiff and other laborers by a paycheck for any hours worked provided it was forty (40) or under.

13. If Plaintiff worked more than forty (40) hours in a week, Defendants did not pay them.

14. If Plaintiff and other laborers worked on the weekends (Saturday or Sunday), the Defendants would pay them by a separate check. Specifically, Defendants paid Plaintiff a fixed amount of \$120.00 as a laborer or \$150.00 as a manager for weekend work.

15. Defendants paid Plaintiff and other laborers in this manner to purposefully avoid overtime pay.

16. Defendants each controlled and/or were responsible for the work of Plaintiff.

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<sup>1</sup> All references to material times relevant to this action shall mean to encompass from 2014 through 2017.

17. Plaintiff worked as a “laborer” for Defendants from May or June 2016 to December 2016, and performed related activities in Orlando (Central Florida), Orange County, Florida.

18. In this capacity, Plaintiff was responsible for performing, including, but not limited to: sweeping parking lots for multiple Walmart locations, cleaning and picking up garbage, filling up cleaning trucks with gas, assigning routes, answering calls, etc..

19. Plaintiff worked as a “manager” for Defendants from January 2017 to October 2017, and performed related activities in Orlando (Central Florida), Orange County, Florida.

20. In this capacity, Plaintiff was responsible for performing, including, but not limited to: performing laborer work when employees were absent, setting up interviews for potential employees, preparing schedules and routes, checking up on complaints, etc.

21. Plaintiff worked for the Defendants from approximately May or June 2016 through end of October 2017.

22. Plaintiff was initially paid \$10.00 per hour from approximately May or June 2016 through October 2016.

23. Plaintiff’s pay was then raised to \$10.50 per hour from October 2016 to December 2016.

24. Plaintiff was eventually promoted to “Manager” and his pay was increased to \$13.00 per hour from January 2017 through end of October 2017.

25. Plaintiff was not paid proper overtime wages for all hours worked on a weekly basis throughout his period of employment.

26. Despite working more than forty (40) hours per week, Plaintiff was not paid all compensation for hours worked over forty (40) hours within a work week during several weeks of employment.

27. Defendants were aware of the overtime hours worked.

28. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of the Defendants.

#### **COVERAGE**

29. At all material times relevant to this action, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

30. At all material times relevant to this action, Defendants made gross earnings of at least \$500,000 annually.

31. At all material times relevant to this action, Defendants accepted payments from customers based on credit cards issued by out-of-state banks, nationwide.

32. At all material times relevant to this action, Defendants routinely ordered materials, merchandise, products, and supplies from out-of-state vendors and/or entities (i.e., cleaning products and supplies, cleaning equipment, trucks, etc.).

33. At all material times relevant to this action, Defendants had two (2) or more employees engaged in commerce, handling or otherwise working on materials that

have been moved in or produced for commerce (i.e., cleaning products and supplies, cleaning equipment, trucks, etc.).

34. At all material times relevant to this action, Plaintiff was individually engaged in commerce during his employment with Defendants, by working with a wide array of cleaning products, supplies and goods.

### **COLLECTIVE/CLASS ALLEGATIONS**

35. Plaintiff and the class members performed the same or similar job duties as one another for Defendants in that they provided laboring and cleaning services.

36. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

37. Thus, the class members are owed overtime compensation for the same reasons as Plaintiff.

38. Defendants' failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that laborers were paid for all overtime hours worked based on the Defendants' failure to credit the laborers with all hours worked and paying a fixed pay for work performed on the weekends.

39. This policy or practice was applicable to Plaintiff and the class members.

40. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the same policies or

practices which resulted in the non-payment of overtime to Plaintiff also apply to all class members.

41. Accordingly, the class members are properly defined as:

**All hourly paid employees whom worked for Defendant, F S PROPERTY MAINTENANCE, INC., within the state of Florida within the last three (3) years and whom were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.**

42. The precise size and identity of the class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendants.

43. The exact number of members of each class can be determined by reviewing Defendants' records. Plaintiff, under information and belief, is informed there are numerous of eligible individuals in the defined class.

44. Defendants failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

45. Defendants were aware of the requirements of the FLSA, yet it acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

46. Plaintiff has hired the undersigned law firm to represent him in this matter and is obligated to pay them reasonable attorneys' fees and costs if they prevail.

47. The claims under the FLSA may be pursued by others who opt-in to this case pursuant to 29 U.S.C. § 216(b).

48. A collective action suit, such as the underlying, is superior to other available means for fair and efficient adjudication of the lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the

expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the wrongs done to them

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION**  
**AGAINST F S PROPERTY MAINTENANCE, INC.**

49. Plaintiff reincorporates and readopts all allegations contained within paragraphs 1 through 48 above.

50. Plaintiff is entitled to be paid time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week.

51. During Plaintiff's employment with Defendant, F S PROPERTY MAINTENANCE, INC., Plaintiff worked overtime hours but was not paid time and one-half his regular rate of pay for the same during several weeks.

52. As a result of Defendant's, F S PROPERTY MAINTENANCE, INC., intentional, willful, and unlawful acts in refusing to pay Plaintiff time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

53. Defendant, F S PROPERTY MAINTENANCE, INC., neither maintained nor kept accurate time records as required by the FLSA for Plaintiff.

54. Also, Defendant, F S PROPERTY MAINTENANCE, INC., failed to post required FLSA informational listings as required by law.

55. As a result of Defendant's, F S PROPERTY MAINTENANCE, INC., willful violation of the FLSA, Plaintiff is entitled to liquidated damages.



**COUNT II**  
**RECOVERY OF OVERTIME COMPENSATION**  
**AGAINST FRANK SCHULZ**

56. Plaintiff reincorporates and readopts all allegations contained within paragraphs 1 through 48 above.

57. Defendant, FRANK SCHULZ, is the Owner and President of F S PROPERTY MAINTENANCE, INC.

58. Defendant, FRANK SCHULZ, is an Owner who acted with direct control over the work, pay, and job duties of Plaintiff.

59. Defendant, FRANK SCHULZ, had the power to hire and fire Plaintiff.

60. Defendant, FRANK SCHULZ, supervised and controlled Plaintiff's work schedule, job duties and responsibilities, and/or conditions of employment.

61. Defendant, FRANK SCHULZ, determined Plaintiff's rate and method of payment.

62. Defendant, FRANK SCHULZ, maintained employment records.

63. As such, Defendant, FRANK SCHULZ, is charged with the responsibility for violations of Plaintiff's rights to overtime and resulting damages.

**WHEREFORE**, Plaintiff, OSVALDO LUNA, individually and on behalf of other similarly situated demands judgment against F S PROPERTY MAINTENANCE, INC., and FRANK SCHULZ, individually, for the payment of all unpaid wages, overtime hours at time and one-half the regular rate of pay for the hours worked by them for which Defendants did not properly compensate them, liquidated damages, reasonable attorneys'

fees and costs incurred in this action, and any and all further relief this Court determines to be just and appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 12<sup>th</sup> day of December, 2017.

Respectfully submitted,

/s/ Carlos V. Leach

Carlos V. Leach, Esq.

Fla. Bar No.: 540021

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*Attorneys for Plaintiff(s)*

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**

OSVALDO LUNA

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*  
Carlos V. Leach, Esq, The Leach Firm, P.A. 1950 Lee Rd., Ste 213  
Winter park, FL 32789; (407) 574-4999

**DEFENDANTS**

F S PROPERTY MAINTENANCE, INC. and FRANK SCHULZ,  
individually

County of Residence of First Listed Defendant Orange  
*(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
- 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 <i>(Excludes Veterans)</i> <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	<b>PERSONAL INJURY</b> <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	<input type="checkbox"/> 225 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <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))	<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	FEDERAL TAX SUITS	
<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609	

**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 Reopened
- 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. § 206 and 29 U.S.C. § 216(b)

Brief description of cause:  
Action for overtime compensation

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS TBD CHECK YES only if demanded in complaint. JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

*(See instructions:)*

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
12/12/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: F S Property Maintenance Attempts to Avoid Paying Overtime](#)

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