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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2017 JUL -7 PM 3:55

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

CASE NO.:

8:17 cv 1644 T33TGW

HARRYETH A. SILVA
and other similarly-situated individuals,

Plaintiff (s),

v.

PROSCAPE GROUP, INC.
and SHAWN J. ROPER

Defendants.

COMPLAINT

(OPT-IN PURSUANT TO 29 U.S.C § 216 (b))

COMES NOW the Plaintiff, HARRYETH A. SILVA, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendant PROSCAPE GROUP, INC. and SHAWN J. ROPER, individually and alleges:

1. This is an action to recover money damages for unpaid overtime wages under the laws of the United States. This Court has jurisdiction pursuant to Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 201-219, § 216(b), the Fair Labor Standards Act, "the Act", (Section 216 for jurisdictional placement), and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §§1332 and 1367.
2. Plaintiff HARRYETH A. SILVA is a resident of Pasco County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.

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3. Defendant PROSCAPE GROUP, INC. (hereinafter PROSCAPE) is a corporation registered to do business in Florida. At all times material hereto, Defendant was and is engaged in interstate commerce.
4. The individual Defendant, SHAWN J. ROPER was as is an individual that upon information and belief owns, manage and operates PROSCAPE. By virtue of such control and authority SHAWN J. ROPER is an employer of Plaintiffs and others similarly situated, as such term is defined by the FLSA, and is responsible for the payment of Plaintiffs' wages.
5. All the action raised in this complaint took place in Pasco County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. This cause of action is brought by Plaintiff as a collective action to recover from Defendant overtime compensation, liquidated damages, and the costs and reasonably attorney's fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT") on behalf of Plaintiff, and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after October 2016 (the "material time") without being compensated overtime wages pursuant to the FLSA.
7. Defendant PROSCAPE is a landscaping and lawn maintenance company. Defendant employed Plaintiff HARRYETH A. SILVA from approximately October 31, 2016 through May 30, 2017 or 30 weeks.
8. Plaintiff was a non-exempt, full time, hourly employee and his wage rate was \$16.05. Plaintiff's overtime rate should be \$24.07 an hour.

9. Plaintiff had duties as a driver and landscaping worker, performing general landscaping work.
10. While employed by Defendants, Plaintiff worked 5 days per week in excess of 40 hours per week. Plaintiff worked Monday to Friday from 6:30 AM to 6:30 PM (12 hours each day) Plaintiff worked a minimum of 60 hours every week. Plaintiff did not take any bona fide lunch break.
11. Plaintiff worked an average of 60 hours per week, but he was paid for only 40 hours weekly. Defendants failed to pay Plaintiff for overtime hours at the rate of time and a half his regular rate as provided by the Fair Labor Standards Act (FLSA).
12. Plaintiff clocked in and out every day, and Defendant was able to keep track of hours worked by Plaintiff and other employees similarly situated. Therefore, Defendant willfully failed to pay Plaintiff overtime hours at the rate of time and a half his regular rate.
13. Plaintiff was paid weekly with checks without any paystub, providing basic information about Plaintiff's wage rate, total number of hours worked, employee taxes etc.
14. On or about May 31, 2017, Plaintiff was fired by Defendant without giving him a reason or valid explanation.
15. Plaintiff HARRYETH A. SILVA seeks to recover overtime wages at the rate of time and a half his regular rate, for every hour in excess of 40 that he worked, liquidated damages, and any other relief as allowable by law.
16. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendant who are and who were subject to the unlawful payroll practices and procedures of Defendant and were not paid overtime wages at the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME,

17. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-16 above as if set out in full herein.
18. This cause of action is brought by Plaintiff HARRYETH A. SILVA as a collective action to recover from Defendant overtime compensation, liquidated damages, costs and reasonably attorney's fees under the provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the "FLA or the "ACT"), on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff ("the asserted class") and who worked in excess of forty (40) hours during one or more weeks on or after the relevant period of employment (the "material time") without being compensated "at a rate not less than one and a half times the regular rate at which he is employed."
19. Defendant PROSCAPE was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a landscaping company that has more than two employees recurrently engaged in commerce or in the production of goods for commerce. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is enterprise coverage.
20. Plaintiff and those similarly-situated, were employed by an enterprise engage in interstate commerce and through his daily activities, Plaintiff and those similarly-situated regularly handled and worked on goods and materials that were moved across State lines at any time

in the course of business, and additionally, by improving and maintaining public buildings.

Therefore, there is individual coverage.

21. Defendant PROSCAPE is a landscaping and lawn maintenance company. Defendant employed Plaintiff HARRYETH A. SILVA from approximately October 31, 2016 through May 30, 2017 or 30 weeks.
22. Plaintiff was a non-exempt, full time, hourly employee and his wage rate was \$16.05. Plaintiff's overtime rate should be \$24.07 an hour.
23. Plaintiff had duties as a driver and landscaping worker, performing general landscaping work.
24. While employed by Defendants, Plaintiff worked 5 days per week in excess of 40 hours per week. Plaintiff worked Monday to Friday from 6:30 AM to 6:30 PM (12 hours each day) Plaintiff worked a minimum of 60 hours every week. Plaintiff did not take any bona fide lunch break.
25. Plaintiff worked an average of 60 hours per week, but he was paid for only 40 hours weekly. Defendants failed to pay Plaintiff for overtime hours at the rate of time and a half his regular rate as provided by the Fair Labor Standards Act (FLSA).
26. Plaintiff, and other similarly situated employees were paid with checks. The checks were not accompanied by any paystubs or records providing information regarding any accounting of hours worked or classification of the employee's labor withholdings of employment taxes.
27. The records, if any, concerning the number of hours actually worked by Plaintiff and those similarly situated, and the compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant

did not maintain accurate and complete time records of hours worked by Plaintiff and other employees.

28. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

29. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid off the clock overtime wages is as follows:

a. Total amount of alleged half-time unpaid O/T wages:

Fourteen Thousand Four Hundred Forty-Two Dollars and 00/100 (\$14,442.00)

b. Calculation of such wages:

Total weeks of employment: 30 weeks

Relevant weeks of employment: 30 weeks

Regular rate: \$16.05 an hour x 1.5 = \$24.07 O/T rate

O/T Rate \$24.07 x 20 O/T hours = \$481.40 weekly x 30 weeks=\$14,442.00

c. Nature of wages (e.g. overtime or straight time):

This amount represents unpaid overtime wages.

30. At all times material hereto, the Employers/Defendant failed to comply with Title 29 U.S.C. §207 (a) (1), in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.

31. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remain owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff's and those similarly-situated employee's employment with Defendant as set

forth above, and Plaintiff and those similarly-situated is entitled to recover double damages.

32. At the times mentioned, individual Defendant SHAWN J. ROPER was the director/owner of corporate Defendant PROSCAPE Defendant SHAWN J. ROPER was the employer of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that this individual Defendant acted directly in the interests of corporate Defendant in relation to its employees, including Plaintiff and others similarly situated. Defendant SHAWN J. ROPER had financial and operational control of the business, provided Plaintiff and other similarly situated employees with their work schedule, and is jointly liable for Plaintiff's damages.
33. Defendant PROSCAPE and SHAWN J. ROPE willfully and intentionally refused to pay Plaintiff overtime wages and minimum wages as required by the law of the United States, and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendant as set forth above.
34. Plaintiff has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff HARRYETH A. SILVA and other similarly-situated individuals and against the Defendant PROSCAPE, and SHAWN J. ROPER, on the basis of Defendant willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and

- B. Award Plaintiff HARRYETH A. SILVA actual damages in the amount shown to be due for unpaid wages and overtime compensation for hours worked in excess of forty weekly, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff and those similarly-situated demand trial by jury of all issues triable as of right by jury.

DATED: June 30, 2017

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 446-1500
Facsimile: (305) 446-1502
zep@thepalmalawgroup.com
Attorney for Plaintiff

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.)

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| <p>I. (a) PLAINTIFFS HARRYETH A. SILVA</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Zandro E. Palma, P.A. 9100 South Dadeland Blvd., Suite 1500 Miami, FL 33156</p> | <p>DEFENDANTS PROSCAPE GROUP, INC. and SHAWN J. ROPER</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p> |
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 SOUTHERN DISTRICT OF FLORIDA

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| <p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> | 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 |
| 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)

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

Brief description of cause:
FLSA

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/30/2017 SIGNATURE OF ATTORNEY OF RECORD: Zandro E. Palma

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: [Ex-Employee's Suit Claims Proscaper Group Owes Unpaid Overtime](#)
