

SUPREME COURT OF FLORIDA

CASE NO. 823

JUAN A. SALINAS and
LUCILA FUENTES,

Appellants

v.

SUE ANN RAMSEY and
HILDA RAMSEY,

Appellees.

ON CERTIFIED QUESTION FROM THE
FEDERAL COURT OF APPEALS FOR THE
ELEVENTH JUDICIAL CIRCUIT

APPELLANTS' APENDIX

J.H. Zidell, Esq.
Florida Bar Number: 0010121
Neil Tobak
Florida Bar Number: 0093940
Rivkah Jaff, Esq.
Florida Bar Number: 0010751

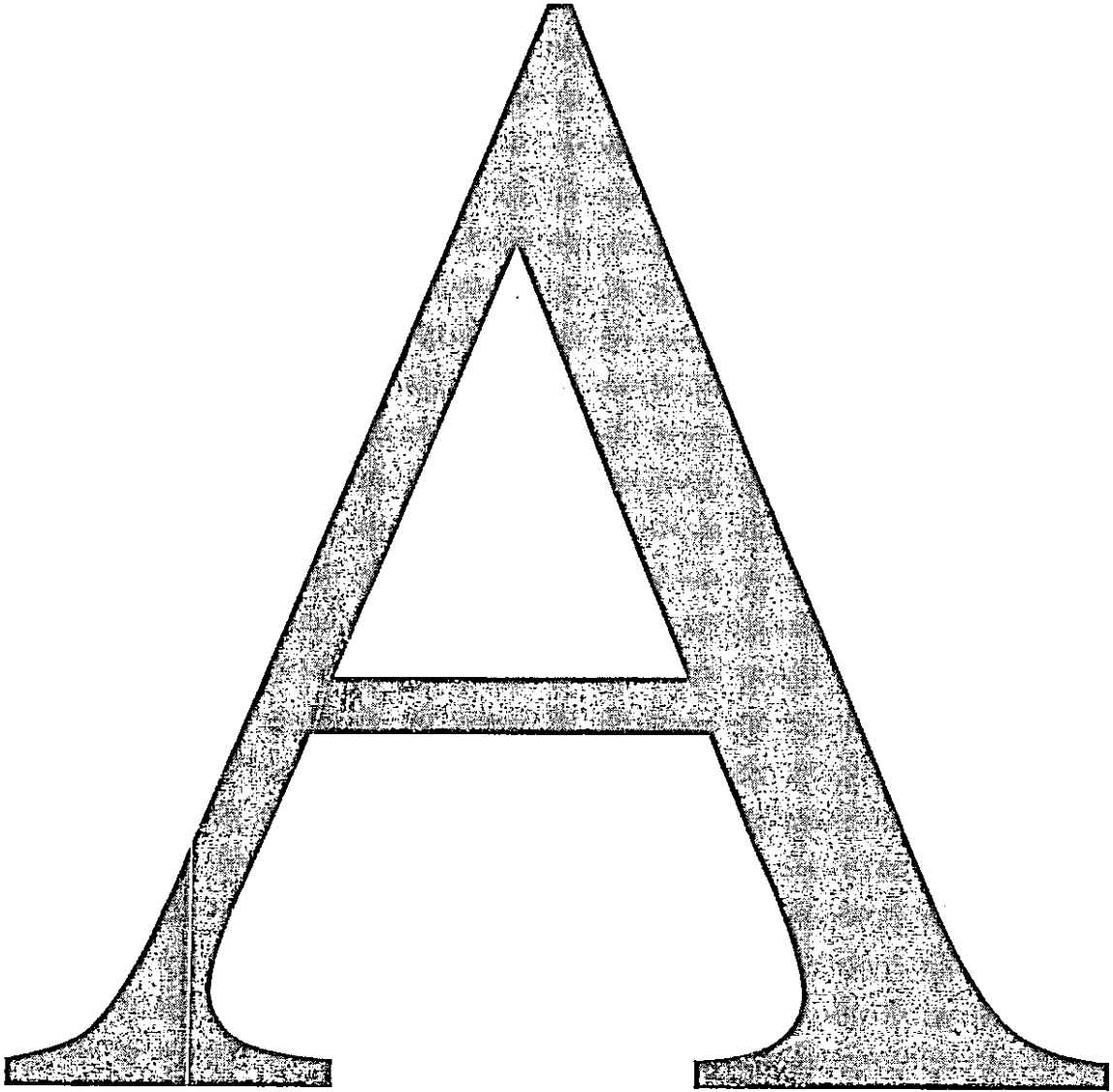
J.H. Zidell, P.A.
300 71st Street, Suite 605
Miami Beach, Florida 33141
Tel: (305) 865-6766
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COUNSELS FOR APPELLANTS

RECEIVED, 06/08/2017 05:08:27 PM, Clerk, Supreme Court

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APPEAL, CLOSED

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:03-cv-22046-KMW

Salinas, et al v. Ramsey, et al
Assigned to: Judge Kathleen M. Williams
Demand: \$0
Case in other court:
16-10552-G
Cause: 29:0201 Fair Labor Standards Act

Date Filed: 08/01/2003
Date Terminated: 09/23/2004
Jury Demand: None
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff

Juan A. Salinas

represented by Jamie H. Zidell
300 71st Street
Suite 605
Miami Beach, FL 33141
305-865-6766
Fax: 865-7167
Email: ZABOGADO@AOL.COM
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Lucila Fuentes

represented by Jamie H. Zidell
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Sue Ann Ramsey

represented by Sue Ann Ramsey

2637 East Atlantic Boulevard
Unit #291
Pompano Beach, FL 33062
PRO SE

Peter Ross Siegel
Greenspoon Marder, P.A.
One Boca Place
2255 Glades Road
Suite 400E
Boca Raton, FL 33431
954-491-1120
Fax: 771-9264
Email: peter.siegel@gmlaw.com
TERMINATED: 07/19/2004
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Hilda Ramsey

represented by **N. James Turner**
Eola Park Centre
200 E Robinson Street
Orlando, FL 32801-4334
407-422-6464
Fax: 422-6516
Email: njtlaw@earthlink.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter Ross Siegel
(See above for address)
TERMINATED: 12/09/2003
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Hilda Ramsey

Date Filed	#	Docket Text
08/01/2003	<u>1</u>	COMPLAINT filed; FILING FEE \$150.00 RECEIPT # 886708 ; Magistrate Judge Stephen T. Brown (gz, Deputy Clerk) (Entered: 08/04/2003)
08/01/2003	<u>2</u>	SUMMONS(ES) issued for Sue Ann Ramsey (gz, Deputy Clerk) (Entered: 08/04/2003)
08/01/2003	<u>3</u>	SUMMONS(ES) issued for Hilda Ramsey (gz, Deputy Clerk) (Entered: 08/04/2003)

		08/04/2003)
08/29/2003	<u>4</u>	MOTION by Sue Ann Ramsey, Hilda Ramsey to extend time to respond to Complaint (wc, Deputy Clerk) (Entered: 09/02/2003)
09/02/2003	<u>5</u>	ORDER granting [4-1] motion to extend time to respond to Complaint set answer due for 9/16/03 for Hilda Ramsey, for Sue Ann Ramsey (Signed by Judge Adalberto Jordan on 8/29/03) [EOD Date: 9/3/03] (gz, Deputy Clerk) (Entered: 09/03/2003)
09/16/2003	<u>6</u>	Answer and affirmative defenses by Sue Ann Ramsey, Hilda Ramsey (Attorney), (gz, Deputy Clerk) (Entered: 09/17/2003)
09/23/2003	<u>7</u>	ORDER requiring parties to file a Joint Scheduling Report by no later than 10/3/03 (Signed by Judge Adalberto Jordan on 9/22/03) [EOD Date: 9/24/03] (gz, Deputy Clerk) (Entered: 09/24/2003)
09/25/2003	<u>8</u>	MOTION by Sue Ann Ramsey, Hilda Ramsey to extend time to respond to discovery (gz, Deputy Clerk) (Entered: 09/26/2003)
10/07/2003	<u>9</u>	MOTION by Sue Ann Ramsey, Hilda Ramsey for protective order regarding depositions set for 10/8/03 (gz, Deputy Clerk) (Entered: 10/08/2003)
10/20/2003	<u>10</u>	NOTICE of non-objection to motion for enlargement of time by Juan A. Salinas, Lucila Fuentes (gz, Deputy Clerk) (Entered: 10/21/2003)
10/21/2003	<u>11</u>	ORDER Response to motion reset to 10/29/03 for [9-1] motion for protective order regarding depositions set for 10/8/03 requiring parties to file a Joint Scheduling Report by no later than 10/29/03 (Signed by Judge Adalberto Jordan on 10/20/03) [EOD Date: 10/22/03] (gz, Deputy Clerk) (Entered: 10/22/2003)
10/30/2003	<u>12</u>	Joint Scheduling Report of Scheduling Meeting by Juan A. Salinas, Lucila Fuentes, Sue Ann Ramsey, Hilda Ramsey (Former Deputy Clerk) (Entered: 11/03/2003)
11/04/2003	<u>13</u>	ORDER setting Schedule, Requiring Mediation and Referring Certain Motions to Magistrate Judge Jury trial set for 9/20/04 Calendar call set for 9:00 9/14/04 Discovery cutoff 5/14/04 ; Deadline for filing of all motions by 6/11/04 Pretrial Stipulation due on or before 7/12/04 (Signed by Judge Adalberto Jordan on 11/4/03) [EOD Date: 11/5/03] CCAP (gz, Deputy Clerk) (Entered: 11/05/2003)
11/04/2003	<u>13</u>	ORDER referring case to mediation. 15 days to appoint mediator (Signed by Judge Adalberto Jordan on 11/4/03) [EOD Date: 11/5/03] (gz, Deputy Clerk) (Entered: 11/05/2003)
11/04/2003	<u>13</u>	ORDER REFERRING DISCOVERY MATTERS to Magistrate Judge Stephen T. Brown (Signed by Judge Adalberto Jordan on 11/4/03) CCAP [EOD Date: 11/5/03] (gz, Deputy Clerk) (Entered: 11/05/2003)

11/10/2003	<u>14</u>	MOTION by Sue Ann Ramsey, Hilda Ramsey for Peter Siegel to withdraw as attorney (Former Deputy Clerk) (Entered: 11/12/2003)
12/09/2003	<u>15</u>	STIPULATION by Hilda Ramsey In Re: substitution of counsel of Peter Siegel to N. James Turner (gz, Deputy Clerk) (Entered: 12/10/2003)
12/10/2003	<u>16</u>	ORDER approving stipulation for substitution of counsel (Signed by Judge Adalberto Jordan on 12/10/03) [EOD Date: 12/11/03] (gz, Deputy Clerk) (Entered: 12/11/2003)
12/22/2003	<u>17</u>	Amended MOTION by Sue Ann Ramsey for Abrams Anton to withdraw as attorney (gz, Deputy Clerk) (Entered: 12/23/2003)
01/05/2004	<u>18</u>	ORDER granting [17-1] motion for Abrams Anton to withdraw as attorney, terminating [14-1] motion for Peter Siegel to withdraw as attorney; all future pleadings, papers and notices shall be sent to Sue Ann Ramsey, 2637 East Atlantic Boulevard, Unit #291, Pompano Beach, Florida 33062 (Signed by Judge Adalberto Jordan on 1/5/04) [EOD Date: 1/7/04] (hd, Deputy Clerk) (Entered: 01/07/2004)
07/14/2004	<u>19</u>	ORDER reset pretrial stipulation and proposed jury instructions due for 7/28/04 (Signed by Judge Adalberto Jordan on 7/14/04) [EOD Date: 7/15/04] (gz, Deputy Clerk) (Entered: 07/15/2004)
07/22/2004	<u>20</u>	MOTION by Juan A. Salinas, Lucila Fuentes for entry of default as to Sue Ann Ramsey, Hilda Ramsey for failure to cooperate in preparing the joint pretrial stipulation and jury instructions as required by 7/14/04 order , to extend time to comply with 7/14/04 order (Former Deputy Clerk) (Entered: 07/27/2004)
07/26/2004	<u>21</u>	Unopposed MOTION by Hilda Ramsey for N. James Turner to withdraw as attorney (gz, Deputy Clerk) (Entered: 07/27/2004)
07/26/2004	<u>22</u>	NOTICE of filing of original affidavit of Jon D. Rankin in support of motion to withdraw as counsel of record and memorandum of law in support thereof by Hilda Ramsey (gz, Deputy Clerk) (Entered: 07/27/2004)
07/26/2004	<u>23</u>	AFFIDAVIT of Jon D. Rankin by Hilda Ramsey Re: [21-1] motion for N. James Turner to withdraw as attorney (gz, Deputy Clerk) (Entered: 07/27/2004)
07/28/2004	<u>24</u>	ORDER denying [20-1] motion for entry of default as to Sue Ann Ramsey, Hilda Ramsey for failure to cooperate in preparing the joint pretrial stipulation and jury instructions as required by 7/14/04 order, terminating [20-2] motion to extend time to comply with 7/14/04 order (Signed by Judge Adalberto Jordan on 07/28/04) [EOD Date: 7/29/04] (ra, Deputy Clerk) (Entered: 07/29/2004)
07/29/2004	<u>25</u>	ORDER granting [21-1] motion for N. James Turner to withdraw as attorney (Signed by Judge Adalberto Jordan on 07/28/04) [EOD Date: 7/30/04] (nt, Deputy Clerk) (Entered: 07/30/2004)

08/10/2004	<u>26</u>	Unilateral PRETRIAL STIPULATION by Juan A. Salinas, Lucila Fuentes (gz, Deputy Clerk) (Entered: 08/11/2004)
09/01/2004	<u>27</u>	ORDER denying as moot [9-1] motion for protective order regarding depositions set for 10/8/03, denying as moot [8-1] motion to extend time to respond to discovery (Signed by Judge Adalberto Jordan on 9/1/04) [EOD Date: 9/2/04] (hd, Deputy Clerk) (Entered: 09/02/2004)
09/15/2004	<u>28</u>	ORDER filing directing Clerk to file the attached letter from Dr. Mario R. Velsaco (Signed by Judge Adalberto Jordan on 9/14/04) [EOD Date: 9/16/04] (gz, Deputy Clerk) (Entered: 09/16/2004)
09/21/2004		Jury trial held before Judge Adalberto Jordan (hd, Deputy Clerk) (Entered: 09/23/2004)
09/22/2004	<u>29</u>	Minutes of jury trial DAY 1 held 9/21/04 before Judge Adalberto Jordan on ; continue Jury trial for 9:00 9/22/04 Court Reporter Name or Tape #: Francine Salopek (hd, Deputy Clerk) (Entered: 09/23/2004)
09/22/2004		Jury trial continued for 9:00 9/22/04 before Judge Adalberto Jordan (hd, Deputy Clerk) (Entered: 09/23/2004)
09/22/2004	<u>30</u>	Proposed Voir dire questions (hd, Deputy Clerk) (Entered: 09/23/2004)
09/23/2004	<u>31</u>	Minutes of jury trial held before Judge Adalberto Jordan on 9/22/04; Court Reporter Name or Tape #: Francine Salopek (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004		Jury trial continued held before Judge Adalberto Jordan (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>33</u>	NOTICE of filing copies of exhibits used at trila by Sue Ann Ramsey, Hilda Ramsey (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>34</u>	NOTICE of filing attached jury instruction by Sue Ann Ramsey, Hilda Ramsey (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>35</u>	NOTICE of filing attached jury notes by Sue Ann Ramsey, Hilda Ramsey (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>36</u>	Stipulation permitting wthdrawal of exhibits and ORDER (Signed by Judge Adalberto Jordan on 9/22/04) [EOD Date: 9/24/04] (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>37</u>	JURY VERDICT for Sue Ann Ramsey, Hilda Ramsey (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004	<u>38</u>	FINAL JUDGMENT for Hilda Ramsey against Juan A. Salinas, Lucila Fuentes shall take nothing fromthis cause. Judgment for Juan A. Salinas against Sue Ann Ramsey in the amount of \$8,325.00. Judgment for Lucila Fuentes against Sue Ann Ramsey in the amount of \$1,560.00. Case is CLOSED, Pending motions are denied as moot (Signed by Judge Adalberto Jordan on 9/23/04)

		[EOD Date: 9/24/04] (gz, Deputy Clerk) (Entered: 09/24/2004)
09/23/2004		CASE CLOSED. Case and Motions no longer referred to Magistrate. (gz, Deputy Clerk) (Entered: 09/24/2004)
09/24/2004	<u>32</u>	NOTICE of filing attached draft instructions to the jury by Sue Ann Ramsey, Hilda Ramsey (gz, Deputy Clerk) (Entered: 09/24/2004)
09/30/2004	<u>39</u>	Verified MOTION by Juan A. Salinas, Lucila Fuentes for attorney fees and to tax costs pursuant to local rule 7.3(B) and 29 USC 216(B) (gz, Deputy Clerk) (Entered: 10/01/2004)
10/04/2004	<u>40</u>	Certificate of good faith and verification of fees and cost motion by Juan A. Salinas, Lucila Fuentes (gz, Deputy Clerk) (Entered: 10/05/2004)
11/01/2004	<u>41</u>	ORDER granting in toto [39-1] motion for attorney fees and to tax costs pursuant to local rule 7.3(B) and 29 USC 216(B) for the amount of \$12,485.00 (Signed by Judge Adalberto Jordan on 11/1/04) [EOD Date: 11/3/04] (gz, Deputy Clerk) (Entered: 11/03/2004)
11/24/2004	<u>42</u>	MOTION by Juan A. Salinas, Lucila Fuentes for writ of execution as to Sue Ann Ramsey (gz, Deputy Clerk) (Entered: 11/29/2004)
11/24/2004	<u>43</u>	WRIT of execution issued to Sue nne Ramsey for the amount of \$8,325.00 plus statutory interest since 9/23/04 plus \$12,485 for fess and costs entered 11/1/04 (gz, Deputy Clerk) (Entered: 11/29/2004)
11/29/2004	<u>44</u>	Mail returned as undeliverable as to docket entry 41 as to Sue Ann Ramsey (gz, Deputy Clerk) (Entered: 12/01/2004)
04/06/2005	<u>45</u>	WRIT of execution issued to Sue Ann Ramsey for the amount of \$8,325.00 plus post-judgment interest for Juan A. Salinas and \$1,560.00 plus post-judgment interest for Lucila Fuentes and \$12,485.00 in attorney fees (gz, Deputy Clerk) (Entered: 04/07/2005)
05/15/2015	<u>46</u>	Plaintiff's MOTION to Compel <i>Defendant, Sue Ann Ramsey, to Complete Fact Information Sheet Pursuant to Florida Rule of Civil Procedure 1.560 and 1.977</i> by Juan A. Salinas. Responses due by 6/1/2015 (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Fact Information Sheet)(Zidell, Jamie) (Entered: 05/15/2015)
05/18/2015	<u>47</u>	CLERKS NOTICE REASSIGNING CLOSED CASE. Document(s) have been submitted to this Court which pertain to a case in which the assigned judge is no longer with this Court. Case reassigned to Judge Kathleen M. Williams for all further proceedings. Judge Adalberto Jordan no longer assigned to case. (tpe) (Entered: 05/18/2015)
05/28/2015	<u>48</u>	Clerk's Notice of Undeliverable Mail re 47 Clerks Notice Reassigning Closed Case,. US Mail returned for: HILDA RAMSEY. <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a</i>

		<i>correct address is provided. First return/attempt. (lrz) (Entered: 05/28/2015)</i>
05/31/2015	<u>49</u>	NOTICE by Juan A. Salinas re 48 Clerk's Notice of Undeliverable Mail, of <i>Updated Address for Defendant Sue Ann Ramsey (Zidell, Jamie) (Entered: 05/31/2015)</i>
06/08/2015	<u>50</u>	ORDER denying <u>46</u> Motion to Compel. Signed by Judge Kathleen M. Williams on 6/8/2015. (ls) (Entered: 06/08/2015)
06/15/2015	<u>51</u>	Plaintiff's MOTION for Reconsideration re <u>50</u> Order on Motion to Compel by Juan A. Salinas. (Attachments: # <u>1</u> Text of Proposed Order)(Zidell, Jamie) (Entered: 06/15/2015)
01/21/2016	<u>52</u>	ORDER denying <u>51</u> Motion for Reconsideration. Signed by Judge Kathleen M. Williams on 1/21/2016. (jas) (Entered: 01/22/2016)
02/04/2016	<u>53</u>	Clerk's Second Notice of Undeliverable Mail re <u>52</u> Order on Motion for Reconsideration. US Mail returned for: Hilda Ramsey . <i>The Court has not located an updated address for this party. Court notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (drz) (Entered: 02/04/2016)
02/09/2016	<u>54</u>	Notice of Appeal as to <u>52</u> Order on Motion for Reconsideration, <u>50</u> Order on Motion to Compel by Lucila Fuentes, Juan A. Salinas. Filing fee \$ 505.00 receipt number 113C-8470765. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Zidell, Jamie) (Entered: 02/09/2016)
02/10/2016		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>54</u> Notice of Appeal, Notice has been electronically mailed. (hh) (Entered: 02/10/2016)
02/12/2016	<u>55</u>	Acknowledgment of Receipt of NOA from USCA re <u>54</u> Notice of Appeal, filed by Juan A. Salinas, Lucila Fuentes. Date received by USCA: 2/10/16. USCA Case Number: 16-10552-G. (hh) (Entered: 02/12/2016)
02/15/2016	<u>56</u>	TRANSCRIPT INFORMATION FORM by Lucila Fuentes, Juan A. Salinas re <u>54</u> Notice of Appeal,. No Transcript Requested. (Zidell, Jamie) (Entered: 02/15/2016)
04/20/2016	<u>57</u>	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>54</u> Notice of Appeal, Appeal No. 16-10552-GG. The entire record on appeal is available electronically. (hh) (Entered: 04/20/2016)

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED BY _____
03 AUG -1 AM 10:28

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA - MIA

JUAN A. SALINAS
and LUCILA FUENTES
Plaintiff.

vs.

CASE # _____

SUE ANN RAMSEY
and HILDA RAMSEY
Defendants.

CIV - JORDAN

COMPLAINT **MAGISTRATE JUDGE**
BROWN

COMES NOW Plaintiff, by and through undersigned counsel and states:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. § 201-216.
2. The Plaintiff was a resident of Dade County, Florida at the time that this dispute arose.
3. The Defendant is a corporation that is located in Broward County and regularly transacts business within Broward County. Upon information and belief, the Defendant was the employer for the Plaintiff for the relevant time period. The individual Defendants, Sue Ann and Hilda Ramsey, are corporate officers who runs the day to day operations of the corporate Defendant for the relevant time period and was responsible for paying Plaintiff's wages for the relevant time period.
4. All acts or omissions giving rise to this dispute took place in Broward County.

1/92

FEDERAL STATUTORY VIOLATION (OVERTIME AND MINIMUM WAGE VIOLATION)

5. This action arises under the law of the United States.

6. This Court has jurisdiction pursuant to The Fair Labor Standards Act, 29 U.S.C. § § 101-139 (section #216 for jurisdictional placement) as well as the Florida Constitution that vests this action within a court of competent jurisdiction.

7. 29 U.S.C. § 206 (a) (1) states " ..an employer must pay a minimum wage of \$5.15 per to an employee who is engaged in commerce..." [29 U.S.C. § 206 (a) (1)]"

8. 29 U.S.C. § 207 (a) (1) states, " if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty at the rate of at least one and one half times the employee's regular rate."

9. Defendant's business activities involve those to which the Fair Labor Standards Act applies. The Plaintiffs were handyman while they worked for the Defendants. Both the Defendant's business and the Plaintiffs' work for the Defendant affected interstate commerce for the relevant time period. Plaintiff Juan Salinas began work for the Defendant on March 24, 2000 until he quit on June 13, 2003 for requesting his overtime wages pursuant to federal law. Plaintiff Lavin Fuentes began work for the Defendant on April 13, 2003 until she quit on June 11, 2003. Plaintiffs' work for the Defendant affected interstate commerce for the relevant time period because the materials that they used on a constant and/or continual basis and/or that were supplied to them by the Defendant to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiffs work for the Defendant via-

actually in and/or so closely related to the movement of commerce while they worked for the Defendant that the Fair Labor Standards Act applies to Plaintiffs' work for the Defendant. The Defendant is an interior decorating company that provides services to various clients... for the relevant time period.

10. Plaintiff Juan Salinas worked an average of 160 hours per week for Defendants from on or about March 2003 until June 2003 when he quit. Plaintiff Lucila Fuentes worked an average of 110 hours per week for the Defendants from on or about April 2003 until June 2003. The Defendant did not keep any written records of the weekly time that the Plaintiffs spent working for them.

11. Plaintiff Juan Salinas was paid \$15.00 per hour for the hours that he worked for the Defendants but was never paid overtime wages as required by the Fair Labor Standards Act for any of the hours that he worked for the Defendants. Plaintiff Lucila Fuentes was paid \$10.00 per hour for the hours that she worked for the Defendants but was never paid overtime wages as required by the Fair Labor Standards Act for any of the hours that she worked for the Defendants.

12. Defendants willfully and intentionally refused to pay Plaintiffs the overtime wages as required by the law of the United States as set forth above and remains owing Plaintiffs these overtime wages since the commencement of Plaintiff's employment with Defendants until they quit on June 2003.

Wherefore, the Plaintiff requests double damages and reasonable attorney fees from Defendants, 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 Plaintiff's entire employment period with each Defendant or, as much as allowed by the Fair Labor Standards Act--whichever is greater along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. The Plaintiff requests a trial by jury.

Respectfully submitted,

J.H. ZIDELL
ATTORNEY FOR PLAINTIFF
300 71st STREET #605
MIAMI BEACH, FLORIDA 33141
305-865-6766
F.B.N. 0010121

BY: _____


J.H. ZIDELL

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Man A. Salinger
 Lucila Fuentes

DEFENDANTS

Sue Ann Ramsey
 Hilda Ramsey

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

Dade

FILED
 03 AUG 11 AM 10:24
 U.S. DISTRICT COURT
 OF FLA. DISTRICT
 SOUTHERN DISTRICT

(EXCEPT IN U.S. PLAINTIFF CASES)

(IN U.S. PLAINTIFF CASES ONLY)

J. H. ZIDELL, P.A.
 CITY NATIONAL BANK BUILDING
 300 SEVENTH AVENUE, SUITE 2005
 MIAMI BEACH, FLORIDA 33141

MAGISTRATE JUDGE
 BROWN

IN REM AND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (IF KNOWN)

ATTORNEYS (IF KNOWN)

305
 825
 6760

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, NONROCE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

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. ORIGIN

- 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
- 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS		FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 11 Insurance <input type="checkbox"/> 12 Marine <input type="checkbox"/> 13 Motor Act <input type="checkbox"/> 14 Negotiable Instrument <input type="checkbox"/> 15 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 16 Medicare Act <input type="checkbox"/> 17 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 18 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 19 Stockholders Suits <input type="checkbox"/> 20 Other Contract <input type="checkbox"/> 21 Contract Product Liability	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	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deponation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutional of State Statutes <input type="checkbox"/> 890 Other Statutory Actions A OR B
A REAL PROPERTY	A CIVIL RIGHTS	PRISONER PETITIONS	A LABOR	B SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 211 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 241 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 781 Empl Ret Inc. Security Act	<input type="checkbox"/> 861 HIA (1395M) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

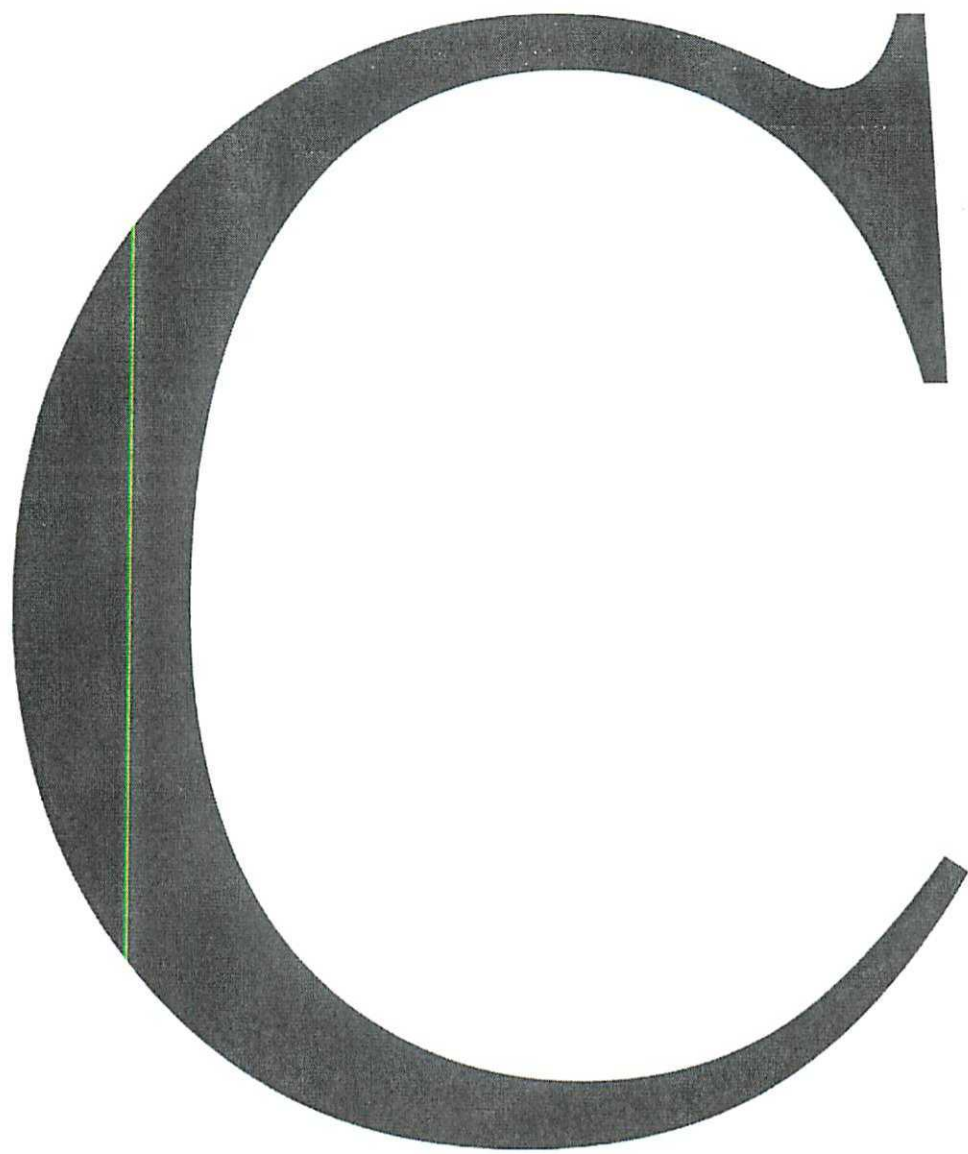
LENGTH OF TRIAL: 29 Wc 201-716
 # days estimated (for both sides to try entire case)

VII. 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: YES NO

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

DATE: 8/1/03 SIGNATURE OF ATTORNEY OF RECORD: [Signature] DEMAND \$: 0150.00 886708

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING FFP _____ JUDGE _____ MAG. JUDGE _____



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 03-22046-CIV-JORDAN
Magistrate Judge Brown

JUAN A. SALINAS and
LUCILA FUENTES

Plaintiffs,

vs.

SUE ANN RAMSEY and
HILDA RAMSEY

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendants, SUE ANN RAMSEY and HILDA RAMSEY, answer the Complaint of Plaintiffs JUAN A. SALINAS ("Salinas") and LUCILA FUENTES ("Fuentes"), and state as follows:

1. Without acknowledging the existence of the remedies sought or Plaintiffs' entitlement to relief, Defendants admit that this lawsuit purports to be an action under the Fair Labor Standards Act, as amended, 29 U.S.C. §201, *et. seq.* (hereinafter referred to as the "FLSA").

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied insofar as 29 U.S.C. §206 (a)(1) speaks for itself.

8. Denied insofar as 29 U.S.C. §207 (a)(1) speaks for itself.

9. Denied.

10. Denied.

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CASE NO: 03-22046-CIV-JORDAN

11. Denied.

12. Denied.

Further responding to Paragraphs 1 through 12 of the Complaint, all allegations not specifically admitted are denied.

AFFIRMATIVE DEFENSES

A. As and for an affirmative defense, Defendants assert that they complied with all of their obligations under the FLSA and all applicable regulations.

B. As and for an affirmative defense, Defendants assert that assuming, *arguendo*, that Plaintiffs prevail in this action, they would not be entitled to liquidated damages because all acts and/or omissions of Defendants were done in good faith and Defendants have reasonable grounds for believing that any acts or omissions were done in good faith and not in violation of the FLSA.

C. As and for an affirmative defense, Defendants assert that they are entitled to a reasonable award of attorney's fees and costs incurred in defending this litigation because it is frivolous, vexatious, brought in bad faith, and the allegations in the Complaint are neither grounded in fact after reasonable inquiry nor warranted by existing law or any good faith argument for modification or reversal of existing law.

D. As and for an affirmative defense, Defendants assert that the Complaint fails to state a claim under the FLSA.

E. As and for an affirmative defense, Defendants assert that SALINAS is not covered by the overtime compensation provisions set forth in the FLSA.

F. As and for affirmative defenses, Defendants assert that FUENTES is not covered by the overtime compensation provisions set forth in the FLSA.

CASE NO: 03-22046-CIV-JORDAN

G. As and for an affirmative defense, Defendants assert that SALINAS' action is barred by the applicable statute of limitations.

H. As and for an affirmative defense, Defendants assert that FUENTES' action is barred by the applicable statute of limitations.

I. As and for an affirmative defense, Defendants assert that SALINAS is not entitled to overtime under the FLSA for those weeks he is unable to satisfy the burden of proving he performed work in excess of 40 hours.

J. As and for an affirmative defense, Defendants assert that FUENTES is not entitled to overtime under the FLSA for those weeks she is unable to satisfy the burden of proving she performed work in excess of 40 hours

K. As and for an affirmative defense, Defendants assert that the Complaint fails to state a claim upon which relief may be granted as it fails to sufficiently identify how many hours were worked each day and how many hours of overtime are allegedly owed.

L. As and for an affirmative defense, Defendants assert that accord and satisfaction controls the relationship between the parties.

M. As and for an affirmative defense, Defendants assert that Plaintiffs are estopped from bringing this action as they failed to accurately record their time worked, including overtime, if any.

N. As and for an affirmative defense, Defendants assert that Plaintiffs and Defendants engaged in a mutual mistake of law and/or fact related to the FLSA.

O. As and for an affirmative defense, Defendants assert that they had no actual or constructive knowledge of Plaintiffs' overtime work, if any, and thus Plaintiffs are not entitled to recover uncompensated overtime pursuant to the FLSA.

CASE NO: 03-22046-CIV-JORDAN

WHEREFORE, Defendants, SUE ANN RAMSEY and HILDA RAMSEY, respectfully request that this Court dismiss the Complaint with prejudice, enter judgment in favor of Defendants, and grant such other and further relief, including an award of reasonable attorney's fees and costs, as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 16th day of September 2003 to: J.H. Zindell, 300 71st Street, Suite 605, Miami Beach, FL 33141.

ABRAMS ANTON P.A.
Attorneys for Defendants
2021 Tyler Street/P.O. Box 229010
Hollywood, Florida 33022-9010
954-921-5500 / 305-940-8440
954-925-7013/fax
prs@abramsanton.com

BY: 
PETER R. SIEGEL
Florida Bar #988634

PRS:mm
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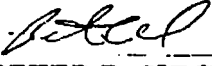
CASE NO: 03-22046-CIV-JORDAN

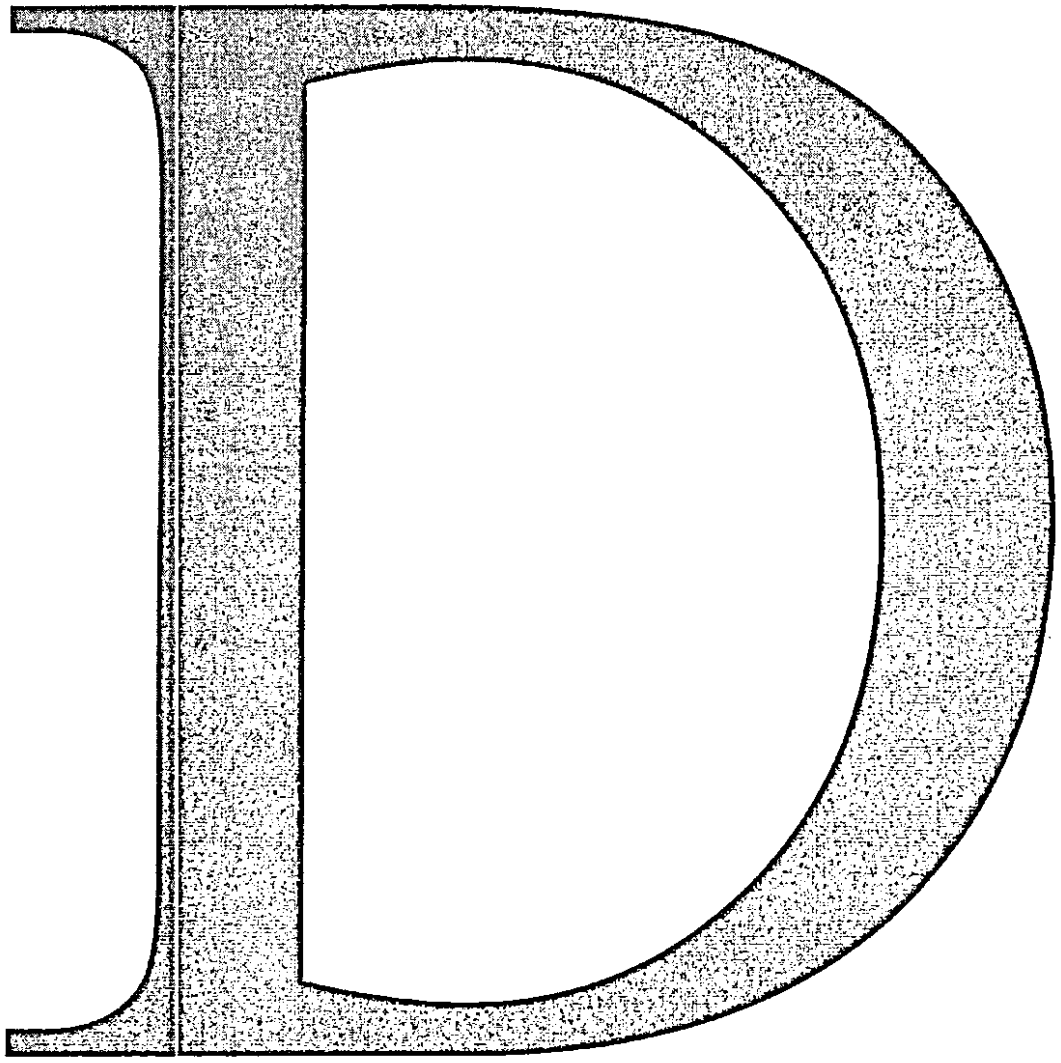
WHEREFORE, Defendants, SUE ANN RAMSEY and HILDA RAMSEY, respectfully request that this Court dismiss the Complaint with prejudice, enter judgment in favor of Defendants, and grant such other and further relief, including an award of reasonable attorney's fees and costs, as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 16th day of September 2003 to: J.H. Zindell, 300 71st Street, Suite 605, Miami Beach, FL 33141.

ABRAMS ANTON P.A.
Attorneys for Defendants
2021 Tyler Street/P.O. Box 229010
Hollywood, Florida 33022-9010
954-921-5500 / 305-940-8440
954-925-7013/fax
prs@abramsanton.com

BY: _____


PETER R. SIEGEL
Florida Bar #988634



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 03-22046-CIV-JORDAN

FILED by _____ D.C.
SEP 23 2004
CLARENCE MADDOX
CLERK U.S. DIST. CT
S.D. OF FLA.

JUAN A. SALINAS and LUCILA)
FUENTES)
Plaintiffs,)
vs.)
SUE ANN RAMSEY and HILDA RAMSEY)
Defendants)

**CLOSED
CIVIL
CASE**

FINAL JUDGMENT

Pursuant to the jury verdict and Rules 54 and 58 of the Federal Rules of Civil Procedure, final judgment is entered as follows:

1. Judgment is entered in favor of Hilda Ramsey and against Juan Salinas and Lucila Fuentes. As to Hilda Ramsey, Mr. Salinas and Ms. Fuentes shall take nothing from this cause.

2. Judgment is entered in favor of Mr. Salinas and against Sue Ann Ramsey in the amount of \$8,325.00, plus post-judgment interest at the rate set by 28 U.S.C. § 1961, for which let execution issue. This includes the \$4,162.50 in overtime wages awarded by the jury plus liquidated damages of an equal amount under 29 U.S.C. § 216(b). Although Sue Ann Ramsey testified that she believed that Mr. Salinas was a contract worker or independent contractor, I do not find that she had a good faith basis for failing to pay overtime wages under the FLSA, as ignorance alone is not enough to avoid liquidated damages, and Sue Ann Ramsey did not undertake any efforts to determine Mr. Salinas' status under the FLSA. *See, e.g., Barcelona v. Tiffany English Pub*, 597 F.2d 464, 468-69 (5th Cir. 1979).

3. Judgment is entered in favor of Lucila Fuentes and against Sue Ann Ramsey in the amount of \$1,560.00, plus post-judgment interest at the rate set by 28 U.S.C. § 1961, for which let execution issue. This includes the \$780.00 in overtime wages awarded by the jury plus liquidated damages of an equal amount under 29 U.S.C. § 216(b). Although Sue Ann Ramsey testified that she believed that Ms. Fuentes was a contract worker or independent contractor, I do not find that she had a good faith basis for failing to pay overtime wages under the FLSA, as ignorance alone is not enough to avoid


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liquidated damages, and Sue Ann Ramsey did not undertake any efforts to determine Ms. Fuentes' status under the FLSA. *See, e.g., Barcelona v. Tiffany English Pub*, 597 F.2d 464, 468-69 (5th Cir. 1979).

Prejudgment interest is not available given the award of liquidated damages. *See Joiner v. City of Macon*, 814 F.2d 1537, 1538 (11th Cir. 1987).

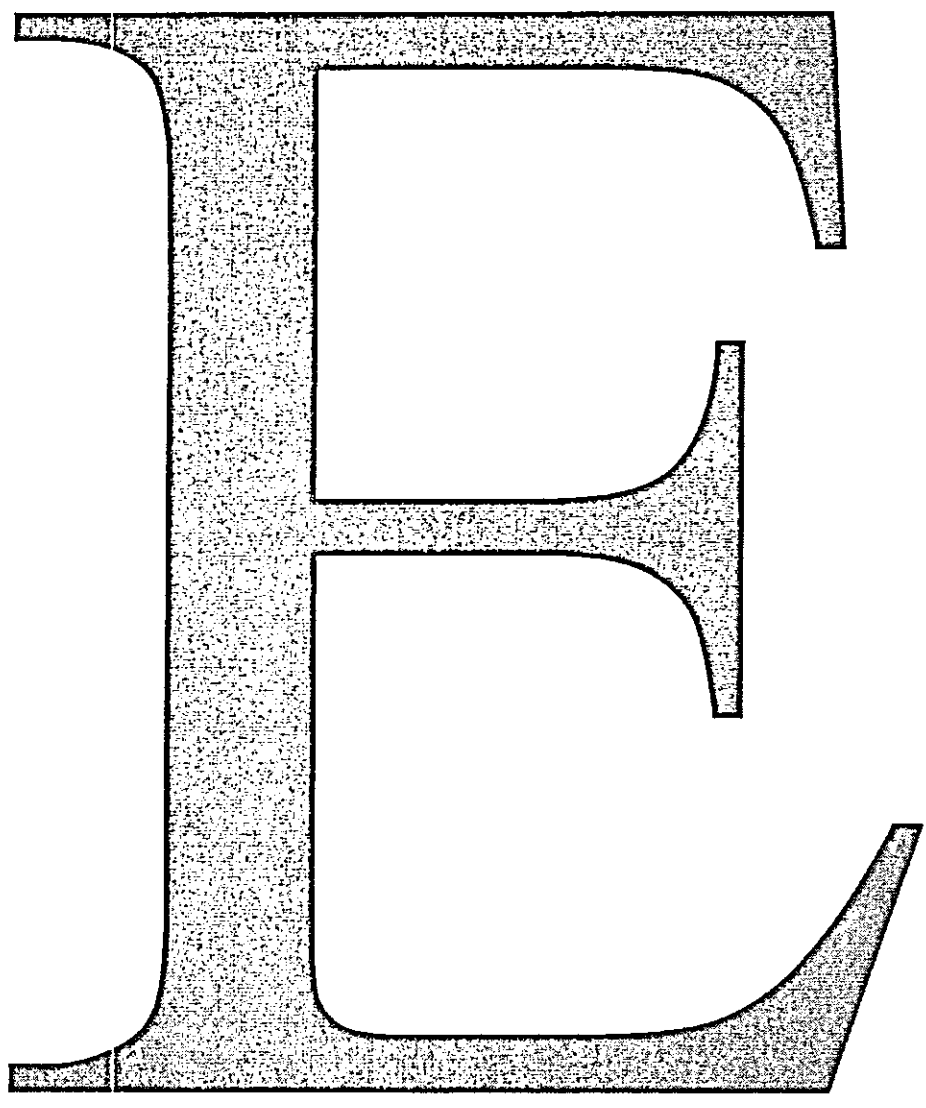
This case is closed, and any pending motions are denied as moot. Hilda Ramsey may move for an award of costs within 30 days of this judgment. Mr. Salinas and Ms. Fuentes may move for an award of attorney's fees and costs within 30 days of this judgment. I will reserve jurisdiction to entertain any such motions that are timely filed.

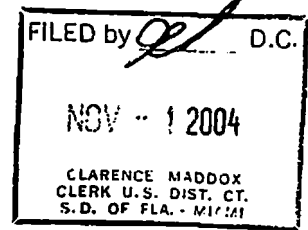
DONE and ORDERED in chambers in Miami, Florida, this 23rd day of September, 2004.



Adalberto Jordan
United States District Judge

Copy to: All counsel of record
Hilda Ramsey and Sue Ann Ramsey, c/o Sue Ann Ramsey, 522 South Hunt Club
Blvd., Apopka, Florida 32703





UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 03-22046-CIV-JORDAN

JUAN A. SALINAS and LUCILA)
FUENTES)
)
Plaintiffs)
)
vs.)
)
SUE ANN RAMSEY and HILDA)
RAMSEY)
)
Defendants)
_____)

Order

The motion by Mr. Salinas and Ms. Fuentes for attorney fees and costs pursuant to Local Rule 7.3(b) and 29 U.S.C. 216(b) against Sue Ann Ramsey [D.E. 39] is GRANTED *in toto*. I find that the attorney fees, in the amount of \$12,485.00 based on 45.4 hours spent at a rate of \$275.00 per hour, and the costs of this action, in the amount of \$445.00, are reasonable.

DONE and ORDERED in chambers in Miami, Florida, this 1st day of ~~October~~ ^{November}, 2004.

Adalberto Jordan
Adalberto Jordan
United States District Judge

Copy to: All counsel of record
Sue Ann Ramsey, 522 South Hunt Club Blvd., Apopka, FL 32703

11/9/04

F

5. Florida Rule of Civil Procedure 1.560 states:

(a) In General. In aid of a judgment, decree, or execution the judgment creditor or the successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(b) Fact Information Sheet. In addition to any other discovery available to a judgment creditor under this rule, the court, at the request of the judgment creditor, shall order the judgment debtor or debtors to complete form 1.977, including all required attachments, within 45 days of the order or such other reasonable time as determined by the court. Failure to obey the order may be considered contempt of court.

(c) Final Judgment Enforcement Paragraph. In any final judgment, the judge shall include the following enforcement paragraph if requested by the prevailing party or attorney:

“It is further ordered and adjudged that the judgment debtor(s) shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor’s attorney, or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this final judgment, unless the final judgment is satisfied or post-judgment discovery is stayed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor(s) to complete form 1.977, including all required attachments, and serve it on the judgment creditor’s attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.”

6. In order to help aid Plaintiff in collection of the judgment, Plaintiff respectfully requests that the Court order Defendant, Sue Ann Ramsey, to complete form 1.977 within 30 days.

Wherefore, Plaintiff respectfully requests that the Court enter an Order requiring Defendant, Sue Ann Ramsey, to complete form 1.977 within 30 days.

Respectfully Submitted,

J.H. Zidell, Esq.
J.H. Zidell, P.A.
Attorney for Plaintiffs
300 71st Street, Suite 605
Miami Beach, Florida 33141
Tel: (305) 865-6766
Fax: (305) 865-7167
Email: Zabogado@aol.com

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

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Notice was sent via U.S. mail to Sue Ann Ramsey, 61 The Glens Blvd., Banner Elk, NC 28604 and 1212 Weybridge LN B, Dunedin, Florida 34698 on this 15th day of May, 2015.

J.H. Zidell, Esq.
J.H. Zidell, P.A.
Attorney for Plaintiffs
300 71st Street, Suite 605
Miami Beach, Florida 33141
Tel: (305) 865-6766
Fax: (305) 865-7167
Email: Zabogado@aol.com

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-22046-CIV-JORDAN

JUAN A. SALINAS AND LUCILA)
FUENTES)
Plaintiffs)
vs.)
SUE ANN RAMSEY AND)
HILDA RAMSEY)
Defendants)

**ORDER GRANTING PLAINTIFF’S MOTION FOR DEFENDANT TO COMPLETE
FACT INFORMATION SHEET IN AID OF EXECUTION PURSUANT TO FLORIDA
RULE OF CIVIL PROCEDURE 1.560 AND 1.977**

This matter came on to be heard regarding the Plaintiff’s above-described Motion, and the Court having reviewed the relevant motions, considered legal argument and otherwise being advised in the premises, it is:

ORDERED and ADJUDGED that Plaintiff’s Motion is Granted. Defendant, Sue Ann Ramsey shall complete form 1.977 and provide said form with all supporting documentation to Plaintiff’s counsel on or before June 15, 2015. Failure to comply with said Order may result in the Court finding Defendant, Sue Ann Ramsey, in contempt of Court.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of May, 2015.

UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

FORM 1.977

FLORIDA RULES OF CIVIL PROCEDURE

FORM 1.977

FORM 1.977. FACT INFORMATION SHEET

(a) For Individuals.

(CAPTION)

FACT INFORMATION SHEET

Full Legal Name: _____
 Nicknames or Aliases: _____
 Residence Address: _____
 Mailing Address (if different): _____
 Telephone Numbers: (Home) _____ (Business) _____
 Name of Employer: _____
 Address of Employer: _____
 Position or Job Description: _____
 Rate of Pay: \$ _____ per _____. Average Paycheck: \$ _____ per _____
 Average Commissions or Bonuses: \$ _____ per _____.
 Commissions or bonuses are based on _____
 Other Personal Income: \$ _____ from _____
 (Explain details on the back of this sheet or an additional sheet if necessary.)
 Social Security Number: _____ Birthdate: _____
 Driver's License Number: _____
 Marital Status: _____ Spouse's Name: _____

Spouse Related Portion

Spouse's Address (if different): _____
 Spouse's Social Security Number: _____ Birthdate: _____
 Spouse's Employer: _____
 Spouse's Average Paycheck or Income: \$ _____ per _____
 Other Family Income: \$ _____ per _____. (Explain details on back of this sheet or an additional sheet if necessary.)
 Describe all other accounts or investments you may have, including stocks, mutual funds, savings bonds, or annuities, on the back of this sheet or on an additional sheet if necessary.

Names and Ages of All Your Children (and addresses if not living with you): _____
 Child Support or Alimony Paid: \$ _____ per _____
 Names of Others You Live With: _____
 Who is Head of Your Household? _____ You _____ Spouse _____ Other Person
 Checking Account at: _____ Account # _____
 Savings Account at: _____ Account # _____

For Real Estate (land) You Own or Are Buying:
 Address: _____
 All Names on Title: _____
 Mortgage Owed to: _____
 Balance Owed: _____
 Monthly Payment: \$ _____

(Attach a copy of the deed or mortgage, or list the legal description of the property on the back of this sheet or an additional sheet if necessary. Also provide the same information on any other property you own or are buying.)

FORM 1.977

FLORIDA RULES OF CIVIL PROCEDURE

FORM 1.977

For All Motor Vehicles You Own or Are Buying:

Year/Make/Model: _____ Color: _____

Vehicle ID #: _____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: \$ _____

Loan Owed to: _____

Balance on Loan: \$ _____

Monthly Payment: \$ _____

(List all other automobiles, as well as other vehicles, such as boats, motorcycles, bicycles, or aircraft, on the back of this sheet or an additional sheet if necessary.)

Have you given, sold, loaned, or transferred any real or personal property worth more than \$100 to any person in the last year? If your answer is "yes," describe the property, market value, and sale price, and give the name and address of the person who received the property.

Does anyone owe you money? Amount Owed: \$ _____

Name and Address of Person Owing Money: _____

Reason money is owed: _____

Please attach copies of the following:

- a. Your last pay stub.
- b. Your last 3 statements for each bank, savings, credit union, or other financial account.
- c. Your motor vehicle registrations and titles.
- d. Any deeds or titles to any real or personal property you own or are buying, or leases to property you are renting.
- e. Your financial statements, loan applications, or lists of assets and liabilities submitted to any person or entity within the last 3 years.
- f. Your last 2 income tax returns filed.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Judgment Debtor

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me this day of, (year) by who is personally known to me or has produced as identification and whodid/did not..... take an oath.

WITNESS my hand and official seal, this day of,(year).....

Notary Public
State of Florida

My Commission expires:

FORM 1.977

FLORIDA RULES OF CIVIL PROCEDURE

FORM 1.977

THE JUDGMENT DEBTOR SHALL FILE WITH THE CLERK OF THE COURT A NOTICE OF COMPLIANCE AFTER THE ORIGINAL FACT INFORMATION SHEET, TOGETHER WITH ALL ATTACHMENTS, HAS BEEN DELIVERED TO THE JUDGMENT CREDITOR'S ATTORNEY, OR TO THE JUDGMENT CREDITOR IF THE JUDGMENT CREDITOR IS NOT REPRESENTED BY AN ATTORNEY.

(b) For Corporations and Other Business Entities.

(CAPTION)

FACT INFORMATION SHEET

Name of entity: _____

Name and title of person filling out this form: _____

Telephone number: _____

Place of business: _____

Mailing address (if different): _____

Gross/taxable income reported for federal income tax purposes last three years:

\$ _____ / \$ _____ \$ _____ / \$ _____ / \$ _____

Taxpayer identification number: _____

Is this entity an S corporation for federal income tax purposes? _____ Yes _____ No

Average number of employees per month _____

Name of each shareholder, member, or partner owning 5% or more of the entity's common stock, preferred stock, or other equity interest:

Names of officers, directors, members, or partners: _____

Checking account at: _____ Account # _____

Savings account at: _____ Account # _____

Does the entity own any vehicles? _____ Yes _____ No

For each vehicle please state:

Year/Make/Model: _____ Color: _____

Vehicle ID No: _____ Tag No: _____ Mileage: _____

Names on Title: _____ Present Value: \$ _____

Loan Owed to: _____

Balance on Loan: \$ _____

Monthly Payment: \$ _____

Does the entity own any real property? _____ Yes _____ No

If yes, please state the address(es): _____

Please check if the entity owns the following:

_____ Boat

_____ Camper

_____ Stocks/bonds

_____ Other real property

_____ Other personal property

Please attach copies of the following:

1. Copies of state and federal income tax returns for the past 3 years.
2. All bank, savings and loan, and other account books and statements for accounts in institutions in which the entity had any legal or equitable interest for the past 3 years.
3. All canceled checks for the 12 months immediately preceding the service date of this Fact Information Sheet for accounts in which the entity held any legal or equitable interest.
4. All deeds, leases, mortgages, or other written instruments evidencing any interest in or ownership of real property at any time within the 12 months immediately preceding the date this lawsuit was filed.
5. Bills of sale or other written evidence of the gift, sale, purchase, or other transfer of any personal or real property to or from the entity within the 12 months immediately preceding the date this lawsuit was filed.
6. Motor vehicle or vessel documents, including titles and registrations relating to any motor vehicles or vessels owned by the entity alone or with others.
7. Financial statements as to the entity's assets, liabilities, and owner's equity prepared within the 12 months immediately preceding the service date of this Fact Information Sheet.
8. Minutes of all meetings of the entity's members, partners, shareholders, or board of directors held within 2 years of the service date of this Fact Information Sheet.
9. Resolutions of the entity's members, partners, shareholders, or board of directors passed within 2 years of the service date of this Fact Information Sheet.

UNDER PENALTY OF PERJURY, I SWEAR OR AFFIRM THAT THE FOREGOING ANSWERS ARE TRUE AND COMPLETE.

Judgment Debtor's Designated
Representative/Title

STATE OF FLORIDA
COUNTY OF

The foregoing instrument was acknowledged before me on(date)...., by, who is personally known to me or has produced as identification and whodid/did not.... take an oath.

WITNESS my hand and official seal, this day of,(year).....

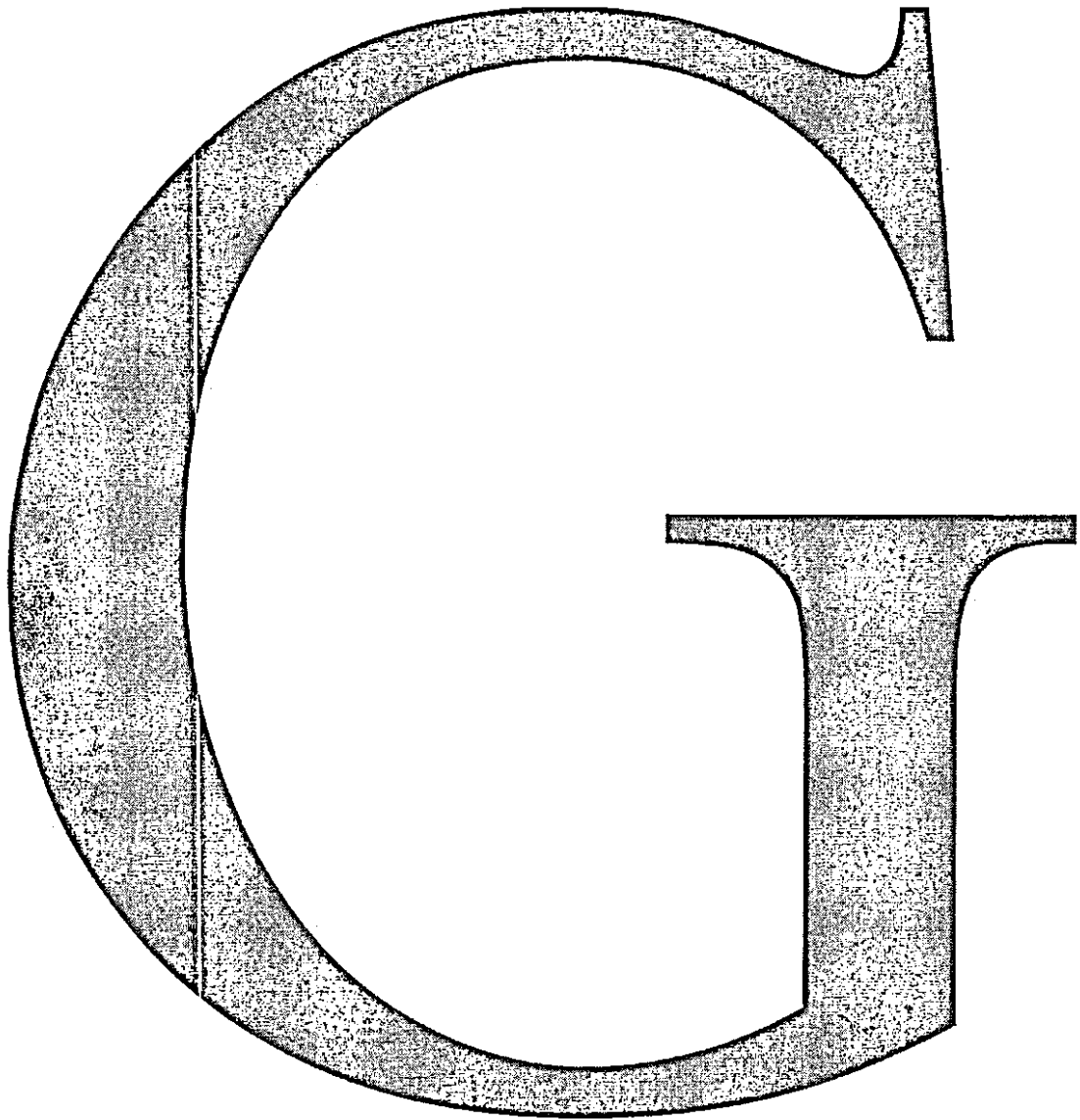
Notary Public
State of Florida

My Commission expires:

THE JUDGMENT DEBTOR SHALL FILE WITH THE CLERK OF THE COURT A NOTICE OF COMPLIANCE AFTER THE ORIGINAL FACT INFORMATION SHEET, TOGETHER WITH ALL ATTACHMENTS, HAS BEEN DELIVERED TO THE JUDGMENT CREDITOR'S ATTORNEY, OR TO THE JUDGMENT CREDITOR IF THE JUDGMENT CREDITOR IS NOT REPRESENTED BY AN ATTORNEY.

Committee Notes

2000 Adoption. This form is added to comply with amendments to rule 1.560.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 03-22046-CIV-WILLIAMS

JUAN A. SALINAS and
LUCILA FUENTES,

Plaintiff,

vs.

SUE ANN RAMSEY and
HILDA RAMSEY,

Defendants.

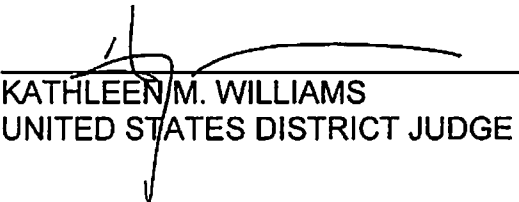
ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

THIS MATTER is before the Court on Plaintiff Juan A. Salinas' motion to compel Defendant Sue Ann Ramsey to complete a fact information sheet in aid of execution pursuant to Florida Rules of Civil Procedure 1.560 and 1.977. (DE 46.)

In this case, Judge Jordan entered a final judgment in favor of Plaintiffs Salinas and Lucila Fuentes on September 24, 2004 following a jury trial that found Defendant Sue Ann Ramsey liable for money damages under the Fair Labor Standards Act. (DE 38.) The Court subsequently issued two writs of execution on the judgment against Defendant Ramsey, first on November 23, 2004 (DE 43), and again on April 6, 2005. (DE 45.) On May 15, 2015 – more than ten years after the second writ issued – Plaintiff Salinas moved to compel discovery of Defendant Ramsey's Form 1.977 information sheet pursuant to Florida Rule of Civil Procedure 1.560 (DE 46), as the law of the state where the district court sits governs the procedure for obtaining money judgments. Fed. R. Civ. P. 69(a)(1).

Unfortunately for Plaintiff Salinas, the Eleventh Circuit has found that Florida applies a five-year limitations period to a judgment creditor's efforts in federal district court to collect on a judgment previously entered by that court. *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048, 1050-51 (11th Cir. 1999); see also Fla. Stat. § 95.11(2)(a). The time for Plaintiff Salinas to enforce his judgment before this Court has long since lapsed. Accordingly, Plaintiff's motion is **DENIED**.

DONE AND ORDERED in Chambers in Miami, Florida, this 8th day of June, 2015.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

HE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-22046-CIV-WILLIAMS/SIMONTON

JUAN A. SALINAS AND LUCILA
FUENTES

Plaintiffs

vs.

SUE ANN RAMSEY AND
HILDA RAMSEY

Defendants

PLAINTIFF'S MOTION FOR RECONSIDERATION OF COURT ORDER D.E. 50

Comes Now Plaintiff, Juan A. Salinas, by and through undersigned counsel, and hereby moves for Reconsideration of this Court's Order [D.E. 50] and in support thereof state as follows:

1. This Court ruled that Plaintiff attempted to collect beyond the 5 year statute of limitations for collecting on a judgment [D.E. 50] pursuant to *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048 (11th Cir. 1999) and Fla Stat. §95.11(2)(a) which states “[a]ctions other than for recovery of real property shall be commenced as follows Fla. Stat. § 95.11 (2) **Within five years.--** (a) An action on a judgment or decree of any court, not of record, of this state or any court of the United States, any other state or territory in the United States, or a foreign country.”
2. Plaintiff moves for reconsideration on said Order, and contends that the 20 year statute of limitations applies pursuant to Fla. Stat. § 95.11(1) and pursuant to *Burshan v. Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 805 So. 2d 835 (Fla. 4th Dist. App. 2001) and *Milliken & Co. v. Haima Group Corp.*, 654 F. Supp. 2d 1374 (S.D. Fla. 2009).

3. Additionally, in *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048 (11th Cir. 1999) it was the judgment debtor (defendant) that raised the statute of limitations defense¹, and was not raised sua sponte by the Court. See *Paetz v. United States*, 795 F.2d 1533 (11th Cir. 1986) (Defendants failed to plead the statute of limitations as an affirmative defense and therefore waived the defense).

The statute of limitations is an affirmative defense which must be specifically pled. Fed.R.Civ.P. 8(c). This court has held in a number of discrimination actions that failure to plead the bar of the statute of limitations constitutes a waiver of the defense. See, e.g., *E.E.O.C. v. White & Son Enterprises*, 881 F.2d 1006, 1009 (11th Cir.1989)(statute of limitations must be expressly pleaded and included in pretrial order or it is waived).

Day v. Liberty Nat. Life Ins. Co., 122 F.3d 1012, 1015 (11th Cir. 1997) See, also, *Braddock v. Madison County*, 34 F.Supp.2d 1098 (S.D. Ind. 1998) addressing waiver of the limitations period in an FLSA context.

Memorandum of Law

A. Standard for Review

The Eleventh Circuit considers motions filed under either Rule 59(e) or Rule 60(b) to be motions for reconsideration, *Region 8 Forest Serv. Timber Purchases Council v. Alcock*, 993 F.2d 800, 806, n.5 (11th Cir. 1993), and such Motions can be granted in only three circumstances: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *Burger King Corp v. Ashland Equities, Inc.*,

¹ Plaintiff takes the position that affirmative defenses should be raised by the Defendant and not sua sponte by the Court.

181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002). Plaintiff moves for reconsidering based upon the third prong.

B. Federal Law versus State Law

As noted above, this Court relied *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048 (11th Cir. 1999) in determining the length of the State of Florida statute of limitation in enforcing a judgment. However, as will be emphasized below, this Court is not bound by said decision, particularly in light of the fact that there have been intervening Florida Appellate Court decisions that have expressly disagreed with the Eleventh Circuit interpretation of Florida law.

Further, the *Buse* Court emphasized that courts are *not* bound to follow prior federal court interpretation of Florida state law where “an intervening Florida decision indicates that [the] earlier appraisal of that state's law is wrong.” *Id.*(emphasis added). Although the *Buse* opinion was ultimately vacated, due to voluntary dismissal by the parties, it is quite instructive. Following *Buse* would, at a minimum, require the application of *Burshan* as it is the most recent intervening intermediate appellate state court decision on the matter.

Milliken & Co. v. Haima Group Corp., 654 F. Supp. 2d 1374, 1380 (S.D. Fla. 2009).

C. Twenty Year Statute of Limitations

“The Federal Rules of Civil Procedure provide that any proceedings supplemental to or in aid of a judgment or execution shall be governed by the procedure of the state in which the district court sits, at the time that the remedy is sought.” *Leasco Response, Inc. v. Wright*, 99 F.3d 381, 382 (11th Cir. 1996). As Florida law controls, in the case of *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048 (11th Cir. 1999) the Eleventh Circuit attempted to predict which statute of limitations the Florida Supreme court would apply to garnishment proceedings. Although the Eleventh circuit previously certified this question to the Florida Supreme Court in *Leasco Response, Inc.*, no opinion was ever issued. Therefore, the analysis by the Eleventh Circuit of Fla.

Stat. § 95.11, was based upon the limited case law such as the case of *Kiesel v. Graham*, 388 So. 2d 594 (Fla. 1st Dist. App. 1980) (applying the five year statute of limitations).

However, since the Eleventh Circuit ruling in 1999, the case law has developed, and the Florida Courts of Appeals have disagreed with the Eleventh Circuit interpretation of Florida Law, and have applied the 20 year statute of limitations to garnishment proceedings. In 2001 the Fourth District Court of Appeals addressed this issue in *Burshan v. Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 805 So. 2d 835 (Fla. 4th Dist. App. 2001). The Fourth Circuit expressly disagreed with *Balfour Beatty Bahamas, Ltd. v. Bush*, and found the *Kiesel v. Graham* Court not to have performed any analysis in coming to the conclusion that the garnishment proceedings were an “action on a judgment.” *Id.* at 843.

The *Kiesel* plaintiffs attempted to use mandamus as a collection mechanism. To paraphrase the film *Jerry Maguire*, the *Kiesel* plaintiffs wanted a writ of mandamus to force the state to “show them the money.” In this regard, the writ of mandamus was not a “new and independent action,” but was like other collection devices contemplated by Florida law, such as scire facias, garnishment, proceedings supplementary, or **discovery in aid of execution**. While mandamus in *Kiesel* may have been objectionable as a collection device on some other ground, it was not an “action on a judgment” within the meaning of section 95.11(2)(a). **[Emphasis added]**.

Id. at 843-44. The Court went on to state:

For similar reasons, we disagree with the eleventh circuit's conclusion that post judgment discovery in aid of execution was an action on a judgment under section 95.11(2)(a). *See Balfour Beatty Bahamas*, 170 F.3d at 1050-51. That case relied primarily on *Kiesel*, without reference to the earlier cases from the Florida Supreme Court. The post judgment discovery at issue in *Balfour Beatty Bahamas*—interrogatories and subpoenas duces tecum—are the type permitted by Florida Rule of Civil Procedure 1.560. In the words of earlier cases, such discovery is not a “new and independent action,” but only a “step leading to the execution of a judgment already obtained.” *B.A. Lott*, 14 So.2d at 669; *Massey*, 100 So. at 171-72.

Id. at 844. Similarly the Court in *Park Fin. of Broward, Inc. v. Jones*, 94 So. 3d 617 (Fla. 4th Dist. App. 2011) found the 20 year statute of limitations to apply to garnishment proceedings. “An execution is thus “subject to the time limit of section 55.081,” Florida Statutes (2009) and may issue during the 20 year life of the underlying judgment. *Burshan v. Nat'l Union Fire Ins. Co.*, 805 So.2d 835, 839 (Fla. 4th DCA 2001).” *Park Fin. of Broward, Inc.* at 619. Likewise see First District Court of Appeals applying 20 year statute of limitations in *Desert Palace, Inc. v. Wiley*, 145 So. 3d 946 (Fla. 1st Dist. App. 2014).

In 2009, this issue was analyzed in the case of *Milliken & Co. v. Haima Group Corp.*, 654 F. Supp. 2d 1374 (S.D. Fla. 2009). In said case, Magistrate Judge Turnoff issued a report and recommendation finding that the five year statute of limitations did not apply to garnishment proceedings. Said report and recommendation was adopted by Judge King of this District. In coming to said conclusion, the Court cited to the Eleventh Circuit opinion, that where there is no state supreme court opinion on point, the court may look to intermediate appellate court decisions in determining state law.

In 2003, the same question (as it pertains to enforcement of judgments) was presented to the Eleventh Circuit in *Buse v. Kuechenberg*, 325 F.3d 1249 (11th Cir.2003). Despite having certified the issue to the Florida Supreme Court, the 11th Circuit explained that federal reviewing courts may look to “state intermediate appellate court decisions on state law when there are no state supreme court decisions on point.” *Id.* at 1251 (citing *McMahan v. Toto*, 311 F.3d 1077, 1080 (11th Cir.2002)). Further, the *Buse* Court emphasized that courts are *not* bound to follow prior federal court interpretation of Florida state law where “an intervening Florida decision indicates that [the] earlier appraisal of that state’s law is wrong.” *Id.*(emphasis added). Although the *Buse* opinion was ultimately vacated, due to voluntary dismissal by the parties, it is quite instructive. Following *Buse* would, at a minimum, require the application of *Burshan* as it is the most recent intervening intermediate appellate state court decision on the matter.

Milliken & Co. v. Haima Group Corp., 654 F. Supp. 2d 1374, 1380 (S.D. Fla. 2009). Therefore, relying on state court interpretation of state law, the Court in Milliken found the 5 year statute of limitations inapplicable.

Therefore, due to the intervening change in case law on this issue, the Eleventh Circuit interpretation on the statute of limitations is contrary to the state courts interpretation of the same statute, and pursuant to Fed. R. Civ. P. 69, the state Court interpretation of the State statute should be followed, and the 20 year statute of limitations should be applied to the present garnishment proceedings.

Wherefore, Plaintiff respectfully requests that this Court reconsider its Order denying Plaintiff's Motion to Compel Defendant to complete fact information sheet, and Order Defendant to Complete the fact information sheet within 30 days.

Respectfully Submitted,

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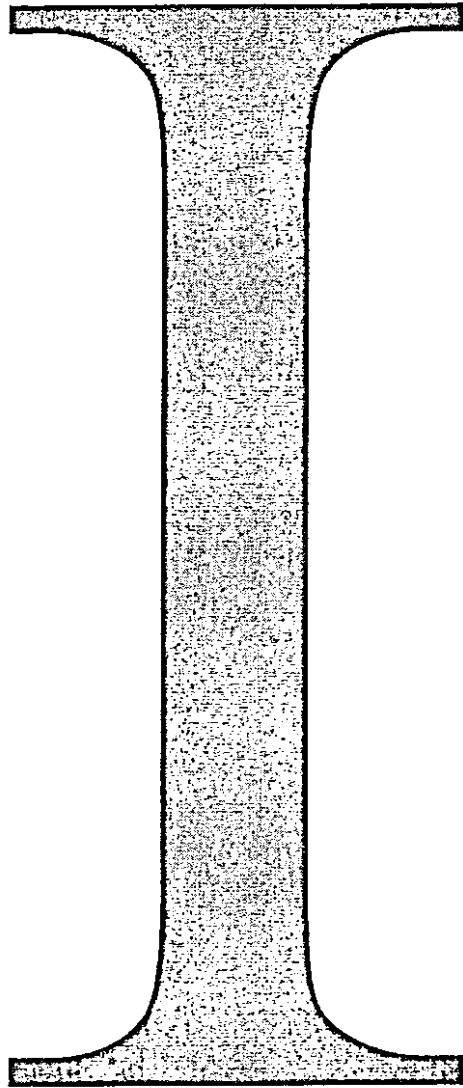
By: /s/ J.H. Zidell _____
J.H. Zidell, Esq
Florida Bar Number: 0010121

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the foregoing Plaintiff's Notice was sent via U.S. mail to Sue Ann Ramsey, 108 S. Oleander Ave, Daytona Beach, Florida 32118, on this 15th day of June, 2015.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 03-22046-CIV-WILLIAMS

JUAN A. SALINAS and
LUCILA FUENTES,

Plaintiff,

vs.

SUE ANN RAMSEY and
HILDA RAMSEY,

Defendants.

ORDER

THIS MATTER is before the Court on Plaintiff Juan Salinas' motion for reconsideration (DE 51) of the Court's order denying his motion to compel. (DE 50). In this case, Judge Jordan entered a final judgment in favor of Plaintiffs Salinas and Lucila Fuentes on September 24, 2004 following a jury trial that found Defendant Sue Ann Ramsey liable for money damages under the Fair Labor Standards Act. (DE 38). The Court subsequently issued two writs of execution on the judgment against Defendant Ramsey, first on November 23, 2004 (DE 43), and again on April 6, 2005. (DE 45). On May 15, 2015 – more than ten years after the second writ issued – Plaintiff Salinas moved to compel discovery on the writ. (DE 46). The Court denied Plaintiff's motion as time barred by the five-year statute of limitations period based on the Eleventh Circuit's reasoning in *Balfour Beatty Bahamas, Ltd. v. Bush*, 170 F.3d 1048 (11th Cir. 1999). Plaintiff's motion asks the Court to reconsider that order.

The only grounds for granting a motion to reconsider are newly discovered evidence or the need to correct manifest errors of law or fact. *Smith v. Ocwen*

Financial, 488 Fed. App'x 426, 428 (11th Cir. 2012). A motion to reconsider cannot be used to re-litigate old matters or raise arguments or present evidence that could have been raised prior to the entry of judgment. *Id.*

Plaintiff has not presented any newly discovered evidence or even so much as a reason for why his counsel, Mr. Jamie H. Zidell, failed to pursue his client's writ of execution for more than a decade.¹ Nor does the Court find a manifest error of law in applying the five-year statute of limitations to Plaintiff's "attempt to enforce a district court judgment, entered in the Southern District of Florida, in the same district court." *Balfour*, 170 F.3d at 1051. Therefore, it is **ORDERED AND ADJUDGED** that Plaintiff's motion for reconsideration (DE 51) is **DENIED**.

DONE AND ORDERED in chambers in Miami, Florida, this 21st day of January, 2016.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

¹ The Court notes that, according to the District's CM/ECF records, Mr. Zidell has brought more than 1,000 FLSA claims in this jurisdiction.