

1 JANET M. HEROLD  
 Regional Solicitor  
 2 SUSAN SELETSKY  
 Counsel  
 3 CHARLES SONG  
 Senior Trial Attorney  
 4 SONYA SHAO (Cal. Bar No. 300832)  
 Trial Attorney  
 5 UNITED STATES DEPARTMENT OF LABOR  
 350 S. Figueroa Street, Suite 370  
 6 Los Angeles, CA 90071-1202  
 Telephone: (213) 894 1592  
 7 Fax: (213) 894-2064  
 Email: shao.sonya.p@dol.gov  
 8 *Attorneys for Plaintiff Eugene Scalia*

9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE DISTRICT OF NEVADA

12  
 13 Eugene Scalia,  
 Secretary of Labor,  
 14 United States Department of Labor,

15 Plaintiff,  
 v.

16 Unforgettable Coatings, Inc., a Nevada Cor-  
 17 poration; Unforgettable Coatings of Idaho,  
 LLC, dba Unforgettable Coatings, a Nevada  
 18 Limited Liability Company; Unforgettable  
 Coatings of Arizona, LLC, dba Unforgettable  
 19 Coatings, an Arizona Limited Liability Com-  
 20 pany; Unforgettable Coatings of Utah, Inc.,  
 dba Unforgettable Coatings, a Utah Corpora-  
 21 tion; Shaun McMurray, an individual; Shane  
 Sandall, an individual; Cory Summerhayes,  
 an individual;

22 Defendants.

Case No. 2:20-cv-00510

COMPLAINT FOR VIOLATIONS  
 OF THE FAIR LABOR  
 STANDARDS ACT

**INTRODUCTION**

1  
2 The Fair Labor Standards Act (“FLSA”) requires employers to pay employees an over-  
3 time premium of one and a half times the employee’s regular rate for all hours over forty hours  
4 in a work week. Contrary to this requirement, Cory Summerhays, an individual, his partners,  
5 and their painting companies doing business as Unforgettable Coatings in Nevada, Utah, Arizo-  
6 na, and Idaho (the above-captioned Defendants), have denied their employees their proper over-  
7 time premium and full lawful wages. Defendants’ employees frequently worked over 40 hours a  
8 week painting buildings and performing other work. However, the employees’ hourly rate es-  
9 sentially stayed the same no matter how many hours they worked, despite the requirement to pay  
10 one and a half times their regular rate for overtime. For years, Defendants failed to pay the over-  
11 time premium properly across Unforgettable Coatings employees in Nevada, Utah, Arizona, and  
12 Idaho.

13 Through actions like these, Defendants have harmed not only their own employees, but  
14 also law-abiding employers who face unfair competition in the marketplace due to Defendants’  
15 illegal practices. The Secretary brings this case to recover the wages owed to Defendants’ em-  
16 ployees, to enjoin future violations, and to protect the significant public interest at stake.

**NATURE OF THE ACTION**

17  
18 1. Plaintiff Eugene Scalia, Secretary of Labor for the United States Department of  
19 Labor (“the Secretary”), is charged with enforcing the FLSA to eliminate “labor conditions det-  
20 rimental to the maintenance of the minimum standard of living necessary for health, efficiency,  
21 and general well-being of workers[.]” 29 U.S.C. § 202(a). In bringing actions under the FLSA,  
22 the Secretary represents not only the interest of the individual employees affected by an employ-  
23 er’s violations of the law, but also the broader public interest, including the interests of law-  
24 abiding employers whose ability to compete is harmed by employers who pay their employees  
25 subminimum wages.

26 2. In this case, the Secretary seeks to enjoin Defendants from violating the require-  
27 ments of the FLSA under § 17 of the FLSA, 29 U.S.C. § 217; and to recover all wages owed to  
28 Defendants’ employees, including those listed by name on the attached Exhibit A to this Com-

1    plaint, and any other employees that the Secretary later identifies, together with an equal amount  
2    as liquidated damages under § 16(c) of the FLSA, 29 U.S.C. § 216(c).

3           3.       The Court has jurisdiction over this action under §§ 16 and 17 of the FLSA, 29  
4    U.S.C. §§ 216 and 217; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1345 (United  
5    States as plaintiff).

6           4.       Venue lies in the District of Nevada pursuant to 28 U.S.C. § 1391(b) because a  
7    substantial part of the events giving rise to the claim occurred in Nevada.

8                   **DEFENDANTS ARE EMPLOYERS SUBJECT TO THE FLSA**

9           5.       Defendant Unforgettable Coatings, Inc., is a Nevada corporation which provides  
10   commercial and residential painting services. It is registered at 8906 Spanish Ridge Ave Ste.  
11   100, Las Vegas, Nevada 89148. It provides painting services by employing workers, including  
12   the employees named in Exhibit A, to perform work such as painting, driving, loading materials,  
13   and overseeing crews. At all relevant times, Defendant Unforgettable Coatings, Inc. is and has  
14   been an employer within the meaning of FLSA § 3(d), 29 U.S.C. § 203(d), in relation to the em-  
15   ployees listed on Exhibit A to this Complaint, and all other employees whom the Secretary later  
16   identifies.

17           6.       Unforgettable Coatings of Idaho, LLC, dba Unforgettable Coatings, is a Nevada  
18   limited liability company which is registered at 8906 Spanish Ridge Ave Ste. 100, Las Vegas,  
19   Nevada 89148. It provides painting services in Idaho by employing workers, including the em-  
20   ployees named in Exhibit A, to perform construction-related work such as painting, driving,  
21   loading materials, and overseeing crews. At all relevant times, Defendant Unforgettable Coatings  
22   of Idaho is and has been an employer within the meaning of FLSA § 3(d), 29 U.S.C. § 203(d), in  
23   relation to the employees listed on Exhibit A to this Complaint, and all other employees whom  
24   the Secretary later identifies.

25           7.       Unforgettable Coatings of Utah, Inc., dba Unforgettable Coatings, is a Utah Cor-  
26   poration which is registered at 213 W 4860 S Murray, Utah 84107. It provides painting services  
27   in Utah by employing workers, including the employees named in Exhibit A, to perform work  
28   such as painting, driving, loading materials, and overseeing crews. At all relevant times, Defend-

1 ant Unforgettable Coatings of Utah is and has been an employer within the meaning of FLSA §  
2 3(d), 29 U.S.C. § 203(d), in relation to the employees listed on Exhibit A to this Complaint, and  
3 all other employees whom the Secretary later identifies.

4 8. Unforgettable Coatings of Arizona, LLC, dba Unforgettable Coatings, is an Ari-  
5 zona limited liability company which is registered at 2250 E Germann Rd Ste 16, Chandler, Ari-  
6 zona 85286. It provides painting services in Arizona by employing workers, including the em-  
7 ployees named in Exhibit A, to perform work such as painting, driving, loading materials, and  
8 overseeing crews. At all relevant times, Defendant Unforgettable Coatings of Arizona is and has  
9 been an employer within the meaning of FLSA § 3(d), 29 U.S.C. § 203(d), in relation to the em-  
10 ployees listed on Exhibit A to this Complaint, and all other employees whom the Secretary later  
11 identifies.

12 9. Defendant Cory Summerhays, an individual, resides in Clark County, Nevada.  
13 He is a full or part owner of Unforgettable Coatings, Inc., Unforgettable Coatings of Idaho, LLC,  
14 dba Unforgettable Coatings; Unforgettable Coatings of Arizona, LLC, dba Unforgettable Coat-  
15 ings, an Arizona Limited Liability Company; Unforgettable Coatings of Utah, Inc., dba Unfor-  
16 gettable Coatings, a Utah Corporation (“Corporate Defendants”). All of the Corporate Defend-  
17 ants perform work as licensed contractors under his name. He travels and supervises the work of  
18 all of the Corporate Defendants. From Nevada, he and/or other officers direct, control, or coor-  
19 dinate all of the Defendants’ activities. At all relevant times, individually and jointly with Shane  
20 Sandall and/or Shaun McMurray, he has acted directly or indirectly in the interest of the Corpo-  
21 rate Defendants in relation to their employees, including by hiring, firing, and/or supervising  
22 employees, determining their pay practices, schedules, and/or assignments, maintaining em-  
23 ployment records, or determining other employment practices. As a result, he is individually lia-  
24 ble as an employer under § 3(d) of the FLSA, 29 U.S.C. § 203(d), for back wages and liquidated  
25 damages owed to Defendants’ employees.

26 10. Defendant Shaun McMurray, an individual, has an ownership interest in Unfor-  
27 gettable Coatings of Utah and other Corporate Defendants, and resides in Utah. At all relevant  
28 times, individually and/or jointly with Cory Summerhays and/or Shane Sandall, he has directed

1 the day-to-day operations of Unforgettable Coatings of Utah, and has acted directly or indirectly  
2 in the interest of Defendants in relation to its employees, including by hiring and supervising  
3 employees, and determining employment practices. As such, he is individually liable as an em-  
4 ployer under § 3(d) of the FLSA, 29 U.S.C. § 203(d), for back wages and liquidated damages  
5 owed to Unforgettable Coatings' employees.

6 11. Defendant Shane Sandall, an individual, has an ownership interest in Unforgetta-  
7 ble Coatings of Arizona and other Corporate Defendants, and resides in Arizona. At all relevant  
8 times, individually and/or jointly with Cory Summerhays and/or Shaun McMurray, he has di-  
9 rected the day-to-day operations of Unforgettable Coatings of Utah and he has acted directly or  
10 indirectly in the interest of Defendants in relation to its employees, including by hiring and su-  
11 pervising employees, and determining employment practices. As such, he is individually liable  
12 as an employer under § 3(d) of the FLSA, 29 U.S.C. § 203(d), for back wages and liquidated  
13 damages owed to Unforgettable Coatings' employees.

14 12. At all relevant times, Cory Summerhays, Shane Sandall, and Shaun McMurray  
15 jointly operated and controlled the Corporate Defendants for the common business purpose of  
16 providing painting services in and around Nevada, Utah, Arizona, and Idaho. As a result, Unfor-  
17 gettable Coatings, Inc., Unforgettable Coatings of Utah, Inc., Unforgettable Coatings of Arizona,  
18 LLC, Unforgettable Coatings of Idaho, LLC, is and has been an "enterprise," as defined in FLSA  
19 § 3(r), 29 U.S.C. § 203(r), with business activities that are related and performed through unified  
20 operation or common control for a common business purpose.

21 13. At all relevant times, two or more employees at all of the Corporate Defendants  
22 have regularly and routinely handled or otherwise worked on goods or materials that have been  
23 moved in or produced for commerce, including paint and painting supplies from vendors such as  
24 Sherman Williams manufactured in Ohio, and Dunn Edwards in Arizona and California. At all  
25 relevant times, Unforgettable Coatings, Inc., Unforgettable Coatings of Arizona, LLC, dba Un-  
26 forgettable Coatings, an Arizona Limited Liability Company; Unforgettable Coatings of Utah,  
27 Inc., dba Unforgettable Coatings, a Utah Corporation, have had a gross annual revenue of over  
28 \$500,000. As a result, Defendants are and at all relevant times have been an enterprise engaged

1 in commerce or in the production of goods for commerce within the meaning of § 3(s)(1)(A) of  
2 the FLSA, 29 U.S.C. § 203(s)(1)(A), in that Defendants at all relevant times had employees en-  
3 gaged in commerce or in the production of goods for commerce, or employees handling, selling,  
4 or otherwise working on goods or materials that have been moved in or produced for commerce,  
5 and had an annual gross volume of sales of not less than \$500,000.

#### 6 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

7 14. In 2013, the Wage and Hour Division, U.S Department of Labor (“Wage and  
8 Hour Division”) conducted an investigation of Unforgettable Coatings of Utah, Inc.’s compli-  
9 ance with the FLSA. Since at least the time of that investigation, Defendants have been aware of  
10 the overtime premium requirement of the FLSA.

11 15. Since at least September 9, 2016, at least two or more of Defendants’ employees  
12 have worked in excess of 40 hours a week in each biweekly pay period except for workweeks  
13 around the New Year.

14 16. Since at least September 9, 2016, Defendants have failed to pay all of their em-  
15 ployees the required rate of time and a half for these overtime hours. Instead, with some varia-  
16 tions, Defendants created an artificial pay rate or pay rate and bonus system that results in De-  
17 fendants paying employees their regular rate, i.e. “straight time,” for all hours they work.

18 17. Since at least September 9, 2016, Defendants failed to create and/or retain accu-  
19 rate records of the daily and weekly hours worked by and wages paid to some of Defendants’  
20 employees.

21 18. Since at least September 9, 2016, Defendants made their painters and other skilled  
22 laborers sign employment agreements which purports to notify the employees that their regular  
23 rate is the minimum wage in the state in which they work, and that they will typically be paid  
24 bonuses. This “agreement” is false in that it is designed to hide the fact that employees are paid  
25 their regular rate, which is higher than the minimum wage, for all hours worked, and they are not  
26 paid a premium of time and one half their actual regular rate for hours worked over 40.  
27  
28

1 19. Through actions like those listed above, Defendants interfered with the ability of  
2 their employees, and derivatively of the Secretary, to understand and detect Defendants' unlaw-  
3 ful payment practices, including their failure to pay overtime.

4  
5 **FIRST CLAIM FOR RELIEF**

6 **Failure to Pay Overtime Premiums in Violation of the FLSA**

7 20. The Secretary incorporates the facts alleged in ¶¶ 1-19.

8 21. Defendants have violated and continue to violate §§ 7 and 15(a)(2) of the FLSA,  
9 29 U.S.C. §§ 207, 215(a)(2), by employing their employees engaged in commerce or in an enter-  
10 prise engaged in commerce, for workweeks longer than 40 hours without compensating the em-  
11 ployees for all their employment in excess of 40 hours in such workweeks at rates not less than  
12 one and one-half the regular rates at which they were employed.

13 22. At all relevant times, Defendants have willfully violated and continue to willfully  
14 violate §§ 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2). Defendants knew or  
15 should have known of the FLSA's overtime requirements but nevertheless employed, and con-  
16 tinue to employ, workers without properly compensating them. Section 17 of the FLSA, 29  
17 U.S.C. § 217, authorizes the Court to enter a judgment that enjoins and restrains this violation,  
18 including restraining Defendants from withholding payment of unpaid overtime compensation  
19 found to be due to present and former employees, including the persons named on the attached  
20 Exhibit A, as well as any employees whom the Secretary later identifies.

21 **SECOND CLAIM FOR RELIEF**

22 **Violation of Recordkeeping Provisions of the FLSA**

23 23. The Secretary incorporates the facts alleged in ¶¶ 1-19.

24 24. Defendants have violated and continue to violate §§ 11(c) and 15(a)(5) of the  
25 FLSA, 29 U.S.C. §§ 211(c) and 215(a)(5), by failing to maintain, keep, make available (to the  
26 Secretary's agents for inspection, transcription, and/or copying), and preserve accurate records of  
27 all employees and of the wages, hours, and other conditions and practices of employment main-  
28 tained, as prescribed by 29 C.F.R. § 516.





1 through the present, to all of Defendants' employees including the employees listed in the  
2 attached Exhibit A and all other employees later identified by the Secretary, and an addi-  
3 tional equal amount as liquidated damages; or

4 (2) In the event liquidated damages are not awarded, under § 17 of the FLSA,  
5 29 U.S.C. § 217, enjoining and restraining Defendants and their officers, agents, servants,  
6 employees and those persons in active concert or participation with Defendants, from  
7 withholding payment of unpaid back wages found to be due, from at least September 9,  
8 2016 through the present, to Defendants' employees, and pre-judgment interest at an ap-  
9 propriate interest rate;

10 (c) For an Order under Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and  
11 217, directing Defendants to pay appropriate compensatory damages found to be due to employ-  
12 ees because of Defendants' violations of 29 U.S.C. § 215(a)(3), together with pre-judgment in-  
13 terest computed at the underpayment rate established by the Secretary of Treasury under 26  
14 U.S.C. § 6621 from the date such wages became due;

15 (e) For an Order providing such further equitable relief as may be deemed necessary  
16 or appropriate, including equitable tolling of the applicable three-year statute of limitations to  
17 redress interference with, or delayed detection of, the violations of the FLSA by the Secretary  
18 due to Defendants' failure to maintain all records and actions to confuse employees and, and de-  
19 rivatively, the Secretary, from detecting and investigating the FLSA violations; and

20 (f) For an Order awarding the Secretary the costs of this action.

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: 3/12/2020

Respectfully submitted,

KATE S. O'SCANNLAIN  
Solicitor of Labor

JANET M. HEROLD  
Regional Solicitor

SUSAN SELETSKY  
Counsel

CHARLES SONG  
Senior Trial Attorney

*/ Sonya Shao* \_\_\_\_\_  
SONYA SHAO  
Trial Attorney

*Attorneys for the Secretary, U.S.  
Department of Labor*