

**FIRST DISTRICT COURT: CRIMINAL COURT  
COUNTY OF SUFFOLK: STATE OF NEW YORK**

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**PEOPLE OF THE STATE OF NEW YORK,**

**-AGAINST-**

**RICHARD ORVIETO and  
DOUBLE "O" LANDSCAPING INC.**

**DEFENDANTS.**  
-----X

**FELONY COMPLAINT  
NYS Office of the Attorney General**

Docket No. 2015SU026067

6-22-15  
DIA

Senior Investigator Lawrence Riccio, shield # 2476, of the NEW YORK STATE OFFICE OF ATTORNEY GENERAL ("OAG"), being duly sworn, deposes and says:

On or about and between August 24, 2011 and January 31, 2014 at 24 Meadow Drive, Stony Brook, NY 11790, in the County of Suffolk, State of New York,

**THE DEFENDANTS, ACTING IN CONCERT, COMMITTED THE OFFENSES OF:**

**Penal Law § 175.35(1) Offering a False Instrument for Filing in the First Degree ("E" felony)  
(9 counts)**

**Penal Law § 175.10 Falsifying Business Records in the First Degree ("E" felony) (9 counts)**

**Labor Law § 198-a(1) Failure To Pay Wages (unclassified misdemeanor) (3 counts)**

**Labor Law § 633 Willful Failure to Pay Unemployment Insurance Contributions  
(unclassified misdemeanor) (4 counts)**

**IN THAT DEFENDANTS DID:**

Commit the crime of offering a false instrument for filing in the first degree when, he or she knowing that a written instrument contained a false statement or false information, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offered or presented it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it would be filed with, registered or

recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation;

Commit the crime of falsifying business records in the first degree when, with intent to defraud, he or she omitted to make a true entry in the business records of an enterprise in violation of a duty to do so which he or she knew to be imposed upon him by law or by the nature of his position and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof;

Commit the crime of failure to pay wages when, he or she failed to pay manual workers weekly and not later than seven calendar days after the end of the week in which the wages were earned as required by Labor Law Section 191(1)(a)(i); and

Commit the crime of willful failure to pay unemployment insurance contributions when he or she willfully failed to make a contribution to the New York State unemployment insurance fund for all of his or her employees.

**THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:**

1. I have reviewed certified records of the New York State Department of State, which show that the defendant **Double "O" Landscaping Inc.** is a domestic business corporation created under the laws of the State of New York, incorporated on or about June 2, 1999, with its principal office located at 24 Meadow Drive, Stony Brook, NY 11790, and with defendant **Richard Orvieto** as its Chief Executive Officer and owner.

**Failure To Pay Wages**

2. I am informed by three witnesses known to the Office of the Attorney General ("Employees 1-3") that they were hired by defendant **Richard Orvieto** to work for defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** and that they worked for defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** as follows:

a. I am informed by Employee 1 that he was employed as a landscaper from in or about April 2012 to on or about October 9, 2013; that defendants **Richard Orvieto** and

**Double “O” Landscaping Inc.** employed approximately 12-20 landscaping workers at any given time that he worked for defendants **Richard Orvieto** and **Double “O” Landscaping Inc.**; that he worked approximately 60 or more hours per week; that he was paid approximately \$110.00-\$120.00 per day for days worked; that he was paid in cash by defendant **Richard Orvieto**; that he was fired by defendant **Richard Orvieto**; and that he was not paid any wages for his last workweek, which was on or about October 9, 2013, and in which he worked five days. Based upon Employee-1’s statements that he was paid approximately \$120.00 per day at the end of his employment and that he worked for five days during his last week, he is owed approximately \$600.00.

b. I am informed by Employee 2 that he was employed as a landscaper from in or about 2010 to on or about October 9, 2013; that defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** employed approximately 15-20 landscaping workers at any given time that he worked for defendants **Richard Orvieto** and **Double “O” Landscaping Inc.**; that he worked approximately 60 or more hours per week; that he was paid approximately \$115.00-\$130.00 per day for days worked; that he was paid in cash by defendant **Richard Orvieto**; that he was fired by defendant **Richard Orvieto**; and that he was not paid any wages for his last workweek, which was on or about October 9, 2013, and in which he worked six days. Based upon Employee-2’s statements that he was paid approximately \$130.00 per day at the end of his employment and that he worked for six days during his last week, he is owed approximately \$780.00.

c. I am informed by Employee 3 that he was employed as a landscaper from in or about 2009 to on or about November 9, 2013; that defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** employed approximately 16-20 landscaping workers at any given time that he worked for defendants **Richard Orvieto** and **Double “O” Landscaping Inc.**; that he worked approximately 60 or more hours per week; that he was paid approximately \$110.00-\$120.00 per day for days worked; that he was paid in cash by defendant **Richard Orvieto**; that he was fired by defendant **Richard**

**Orvieto**; and that he was not paid any wages for his last workweek, which was on or about November 9, 2013, and in which he worked six days. Based upon Employee-3's statements that he was paid approximately \$120.00 per day at the end of his employment and that he worked for six days during his last week, he is owed approximately \$720.00.

3. Based upon my familiarity with the New York Labor Law, I know that employers are required to pay workers at the rate of one and one-half times their regular rate of pay for hours worked in excess of forty in any given workweek.

4. Based upon the statements that Employees 1-3 made to me about the wages they were paid and the hours they worked, I conducted a wage underpayment calculation ("OT calculation"). Specifically, based upon the statements that Employees 1-3 worked 60 hours per week and my familiarity with the New York Labor Law, my starting point was that each employee worked approximately 20 hours of overtime per week. I determined their approximate regular rates of pay by dividing their weekly wages by their total weekly hours worked of approximately 60 hours per week. I then counted how many weeks of unpaid overtime there were between April 1, 2013 and the end of their employment with defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** Finally, I calculated their unpaid overtime by multiplying 20 hours first by one half of their regular rates of pay – the difference between the regular rates of pay they were paid for all hours and the one and one-half times their regular rate of pay they should have been paid for overtime hours – and then by the number of weeks of unpaid overtime. Based upon the OT calculation, I have concluded that, beside their last week's pay as described above, Employee 1 is owed approximately \$3,137.14 in unpaid overtime, Employee 2 is owed approximately \$3,974.29 in unpaid overtime, and Employee 3 is owed approximately \$3,821.43 in unpaid overtime.

## **Offering a False Instrument, Falsifying Business Records, and Willful Failure to Pay Unemployment Insurance Contributions**

5. Based upon my experience as a law enforcement officer and prior investigations, I am familiar with New York Tax Law § 674, which requires that employers file New York State Department of Taxation and Finance (“Department of Taxation and Finance”) NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns with the Department of Taxation and Finance for each calendar quarter in which they employ and pay wages to employees and thereby report accurately all wages paid to employees during each such quarter. These quarterly returns are additionally required to be submitted to the New York State Department of Labor for the purpose of calculating the liability of employers for contributions to the Unemployment Insurance Fund.

6. I have reviewed business records provided to OAG by the New York State Department of Labor. These business records are maintained in the regular course of business of the New York State Department of Labor and include the New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns for the second quarter of 2011 through the fourth quarter of 2013 that were filed with the New York State Department of Taxation and Finance, as required of employers by New York Tax Law § 674, by defendant **Double “O” Landscaping Inc.**, and that bear a signature of Richard Orvieto as president of **Double “O” Landscaping Inc.** (“Double “O” NYS-45 Quarterly Returns”). These NYS-45 Quarterly Returns were additionally filed by the defendants with the New York State Department of Labor for the purpose of calculating the financial liability of the defendants **Double “O” Landscaping Inc.** and **Richard Orvieto** for contributions to the Unemployment Insurance Fund.

7. The Double “O” NYS-45 Quarterly Returns purport to report remuneration paid to employees for the indicated quarterly period. Yet, the Double “O” NYS-45 Quarterly Return filed on August 24, 2011 (for the period from April 1, 2011 to June 30, 2011) did not contain the names of Employees 2-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers.

However, only 2 names in total were listed on the Double “O” Quarterly Return for this quarterly period. Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 2-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** did not pay unemployment insurance contributions for Employees 2-3 and several other workers.

8. The Double “O” NYS-45 Quarterly Return filed on October 31, 2011 (for the period from July 1, 2011 to September 30, 2011) did not contain the names of Employees 2-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 4 names in total were listed on the Double “O” Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 2-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** did not pay unemployment insurance contributions for Employees 2-3 and several other workers for this quarterly period.

9. The Double “O” NYS-45 Quarterly Return filed on January 31, 2012 (for the period from October 1, 2011 to December 31, 2011) did not contain the names of Employees 2-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 4 names in total were listed on the Double “O” Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 2-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** did not pay unemployment insurance contributions for Employees 2-3 and several other workers for this quarterly period.

10. The Double “O” NYS-45 Quarterly Return filed on July 31, 2012 (for the period from April 1, 2012 to June 30, 2012) did not contain the names of Employees 1-3. As noted above,

during this quarterly period Employee 1 observed at least 12 other landscaping workers, Employee 2 observed at least 12 other landscaping workers, and Employee 3 observed at least 16 landscaping workers. However, only 5 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

11. The Double "O" NYS-45 Quarterly Return filed on October 29, 2012 (for the period from July 1, 2012 to September 30, 2012) did not contain the names of Employees 1-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 2 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

12. The Double "O" NYS-45 Quarterly Return filed on January 24, 2013 (for the period from October 1, 2012 to December 31, 2012) did not contain the names of Employees 1-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 5 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

13. The Double "O" NYS-45 Quarterly Return filed on July 26, 2013 (for the period from April 1, 2013 to June 30, 2013) did not contain the names of Employees 1-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 4 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

14. The Double "O" NYS-45 Quarterly Return filed on October 30, 2013 (for the period from July 1, 2013 to September 30, 2013) did not contain the names of Employees 1-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 3 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

15. The Double "O" NYS-45 Quarterly Return filed on January 31, 2014 (for the period from October 1, 2013 to December 31, 2013) did not contain the names of Employees 1-3. As noted above, during this quarterly period Employee 2 observed at least 12 other landscaping workers and Employee 3 observed at least 16 landscaping workers. However, only 3 names in total were listed on the Double "O" Quarterly Return for this quarterly period, one of which was Defendant **Richard Orvieto**. Defendants **Richard Orvieto** and **Double "O" Landscaping Inc.** thereby did not report any wages to the State Unemployment Insurance Fund for Employees 1-3 (and for several other workers) for this quarterly period. Consistent with this failure to report wages, the



Defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** did not pay unemployment insurance contributions for Employees 1-3 and several other workers for this quarterly period.

16. Based upon my review of the Double “O” NYS-45 Quarterly Returns and based upon my interviews with Employees 1-3, defendants **Richard Orvieto** and **Double “O” Landscaping Inc.** did not pay contributions to the state Unemployment Insurance Fund for all their employees for any of the following quarterly periods during which they were employed: fourth quarter 2012 (for the period from October 1, 2012 to December 31, 2012); second quarter of 2013 (for the period from April 1, 2013 to June 30, 2013); third quarter of 2013 (for the period from July 1, 2013 to September 30, 2013); and fourth quarter 2013 (for the period from October 1, 2013 to December 31, 2013).

17. I have reviewed an audit prepared by the New York State Department of Labor, Unemployment Insurance Division assessing the unemployment insurance contributions paid by defendants (“UI Audit”). Based upon my review of the UI Audit, the defendants failed to pay a total of \$11,996.00 in unemployment insurance contributions to the State of New York and are also liable for fraud penalties in the amount of \$5,998.00 and interest in the amount of \$1,862.64.

The above is based upon both personal knowledge and upon information and belief, the source of which is included, but not limited to information from the employees of the Defendants and documents of the Defendants.

**ANY FALSE STATEMENT MADE IN THIS INFORMATION IS PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW**



Senior Investigator Lawrence Riccio, shield # 2476, OAG  
Dated: June 18, 2015