

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NO: GC 146 OF 2020  
LACV0100/2019**

**BETWEEN:**

**YOEL ESPONCEDA DIAZ**

**PLAINTIFF**

**AND:**

**CAYMAN ISLANDS GOVERNMENT**

**DEFENDANT**

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**WRIT OF SUMMONS**

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**TO: CAYMAN ISLANDS GOVERNMENT** of the 4<sup>th</sup> floor, Government Administration Building, P.O. Box 136 133 Elgin Avenue, George Town, Grand Cayman KY1-9000, Cayman Islands.

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, of 9 George Street, West Bay, Grand Cayman, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 29<sup>th</sup> day of September 2020.

**NOTE** this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

**IMPORTANT**

Directions for the Acknowledgement of service are given with the accompanying form.

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**STATEMENT OF CLAIM**

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1. The Plaintiff is a Cuban national, born 26 May 1979 and was at all material times resident in the Cayman Islands. The Plaintiff arrived in the Cayman Islands on 5 May 2016 seeking asylum and was taken to the Immigration Detention Center ("**IDC**").
2. The Defendant is the government of the Cayman Islands Government.
3. Whilst the Plaintiff was detained at the IDC, he was under the supervision, custody and control of the former Department of Immigration (now the Workforce Opportunities & Residency Cayman ("**WORC**")), which is a department of the Defendant.
4. During the Plaintiff's time at the IDC he was offered the opportunity to work in exchange for tokens which could be exchanged for food and other items. The work involved assorted jobs, such as yard work, which were carried out on sites around Grand Cayman. The terms governing this work were explained to the Plaintiff verbally by Immigration Officers at the IDC and the Plaintiff accepted. As such the Plaintiff became an employee of the Defendant.
5. On 5 October 2017 the Plaintiff was taken by Officers of the Department of Immigration to HMP Northward to carry out yard work. He remained at all times as a detainee in the custody of the Defendant.
6. Once at HMP Northward the Plaintiff was provided by the Defendant with a strimmer or "weed wacker" (the "**Strimmer**"). He was directed by the Defendant to use the Strimmer to cut the grass. The Strimmer had very fast rotating blades or cables and whilst using the equipment, an object was thrown up from the Strimmer into the Plaintiff's left eye (the "**Accident**"). The Plaintiff suffered injury as a result of which he lost sight in his left eye and suffered pain, injury and distress.
7. By virtue of the fact that the Plaintiff was a detainee in the custody of the Defendant, the Defendant owed a duty of care to the Defendant to ensure his health, safety and welfare. The Defendant failed in that duty.
8. The Defendant also owed a duty of care, together with statutory duties, to the Plaintiff as the employer of the Plaintiff.

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons, attorneys for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

9. The Accident was caused or contributed to by the negligence and/or breach of duty of the Defendant, its servant or their agents in the following way:

### **Particulars of Negligence**

The Defendant:

- (a) failed to provide any, or any adequate, training to the Plaintiff on how to use the Strimmer;
- (b) failed to warn the Plaintiff of the dangers of working in the above circumstances or otherwise prevent him from so doing;
- (c) failed to provide the Plaintiff with appropriate safety equipment including, but not limited to, goggles or glasses;
- (d) failed to properly supervise the Plaintiff whilst he was using the Strimmer;
- (e) failed to ensure that the Defendant received immediate and appropriate medical attention following the accident;
- (f) failed to take any, or any adequate, precautions for the safety of the Plaintiff whilst he was using the Strimmer;
- (g) expose the Plaintiff to a risk of injury with the Defendant knew or ought to have known existed;
- (h) failed to ensure the safety of the Plaintiff whilst he was performing duties which the Defendant had directed him to carry out;
- (i) failed to provide and/or maintain safe or proper system of work;
- (j) failed to take any or adequate care for the safety of the Plaintiff;
- (k) failed to take suitable and sufficient steps to ensure, so far as is reasonably practicable, the health, safety and welfare of the Plaintiff; and
- (l) failed to adhere to section 58 of the Labour Law (2011 Revision).

By reason of the matters aforesaid, the Plaintiff has sustained pain, injury, loss and damage

### **Particulars of Injury**

10. The Plaintiff has so far been diagnosed with almost complete loss of the sight in his left eye which is irreparable. The Plaintiff's medical records are in the custody or control of the Defendant have not been disclosed at this time despite a request made by the Plaintiff in writing on 10 July 2020.
11. Full particulars of injury will be provided to the Defendant upon receipt of the Plaintiff's medical records.

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons, attorneys for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

## **Particulars of Special Damage**

12. The Plaintiff's capacity to work has been impaired as a result of his injuries.
13. To the extent that the Plaintiff has been left with a residual disability and future loss of income in relation to his employment, the Plaintiff pleads that but for this accident she would have worked in some income producing capacity until age 70. The Plaintiff accordingly claims for future loss of income based on multipliers and multiplicand.
14. The Plaintiff further claims that in the circumstances he has been compromised in the competitive labour market as the result of her disability. Full particulars will be provided to the Defendant prior to trial.
15. The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the Court thinks fit.

## **AND THE PLAINTIFF CLAIMS**

- (i) General and Special Damages;
- (ii) Pre-judgment interest on general damages at a rate of 2% from 5 October 2017 to the date of judgment;
- (iii) Post-judgment interest on general damages at a rate of 2%;
- (iv) Pre-Judgment interest upon special damages with effect from 5 October 2017 to the date of judgment at half the rate prescribed in in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time such rate present being fixed at  $2^{3/8}$  %;
- (v) Pre-Judgment interest upon special damages with effect from 5 October 2017 to the date of judgment at half the rate prescribed in in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time which is currently fixed at  $2^{3/8}$  %;
- (vi) Post-Judgment interest upon special damages with effect from 5 October 2017 to the date of judgment at half the rate prescribed in in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time such rate present being fixed at  $2^{3/8}$  %;
- (vii) Costs; and

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons, attorneys for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

(viii) Such further or other relief as this Honourable Court deems just.

**DATED** at Grand Cayman this 29<sup>th</sup> day of September 2020.

*Nelsons*

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Nelsons  
Attorneys for the Plaintiff

**TO:** The Clerk of the Grand Court

**AND TO:** Cayman Islands Government

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons, attorneys for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201 Cayman Islands.

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**CAUSE NO: GC                      OF 2020  
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**BETWEEN:**

**YOEL ESPONCEDA DIAZ**

**PLAINTIFF**

**AND:**

**CAYMAN ISLANDS GOVERNMENT**

**DEFENDANT**

**ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes                       No

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)  
 Yes                       No

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Service of the Writ is acknowledged accordingly

Signed .....

Attorney for the Defendant

Address for service:

**Please complete overleaf**

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Nelsons  
Attorneys at Law  
PO Box 30069  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1201  
Attn: A. Carver

Indorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorney indorsement]

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

## Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.