

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE GAMEZ, on behalf of himself and all
others similarly situated,

Case No.: 16-CV-6361

Plaintiff(s),
-against-

LENA JESS ENTERPRISES, INC. d/b/a D & D
LANDSCAPE DESIGN & CONSTRUCTION,
INC., J & D D’AMICO ENTERPRISES CORP.,
JANET D’AMICO, individually, and DEAN
D’AMICO, individually,

COMPLAINT

Defendant(s).

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Plaintiff JOSE GAMEZ, on behalf of himself and all others similarly situated, by and through his attorneys McLaughlin & Stern, LLP, complaining of the defendants LENA JESS ENTERPRISES, INC. d/b/a D & D LANDSCAPE DESIGN CONSTRUCTION, INC. (hereinafter “LENA JESS”); J & D D’AMICO ENTERPRISES CORP. d/b/a D & D LANDSCAPE DESIGN CONSTRUCTION, INC. (hereinafter “J&D”); JANET D’AMICO, individually and DEAN D’AMICO, individually, (collectively “D & D LANDSCAPE,” “defendants” or “defendant”), alleges as follows:

INTRODUCTION

1. Plaintiff brings this action seeking monetary damages and affirmative relief based upon defendants’ violation of the Fair Labor Standard Act of 1938 (hereinafter referred to as “FLSA”), as amended, 29 U.S.C. § 201 *et seq.*, the New York Labor Law (hereinafter referred to as “NYLL”) and other appropriate rules, regulations, statutes and ordinances.

JURISDICTION & VENUE

2. Jurisdiction of the Court over this controversy is based upon 29 U.S.C. § 201, *et seq.*, 28 U.S.C. §§ 1331 and 1337 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
3. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.
4. Defendants do business in the State of New York, within the Eastern District of New York, maintaining a place of business at 5640 Old Sunrise Highway, Massapequa, New York 11758.
5. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

THE PARTIES

6. Plaintiff JOSE GAMEZ is a resident of the County of Nassau, State of New York.
7. At all times relevant to the Complaint, plaintiff JOSE GAMEZ was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and NYLL § 190(2).
8. Plaintiff JOSE GAMEZ was employed by defendants from in or around July 2010 until in or around December 2014.
9. That during the course of his employment with defendants, plaintiff JOSE GAMEZ was a landscape and construction worker.
10. Upon information and belief, defendant LENA JESS was and still is a domestic corporation organized and existing pursuant to the laws of the State of New York.
11. Upon information and belief, defendant LENA JESS’ place of business was and still is 5640 Old Sunrise Highway, Massapequa, New York 11758.

12. Upon information and belief, defendant LENA JESS was and still is engaged in the landscape design and construction business.
13. At all times hereinafter mentioned, defendant LENA JESS was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).
14. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO owns and/or operates the defendant LENA JESS.
15. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO is the President of the defendant LENA JESS.
16. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO, is the Vice-President of the defendant LENA JESS.
17. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO is a shareholder of the defendant LENA JESS.
18. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO is a corporate officer of the defendant LENA JESS.
19. Upon information and belief, and at all time hereinafter mentioned, the defendant DEAN D’AMICO is the Chief Executive Officer of the defendant LENA JESS.
20. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO is an agent of the defendant LENA JESS.
21. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO has the authority over personnel decisions for the defendant LENA JESS.
22. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D’AMICO has authority over payroll decisions for the defendant LENA JESS.

23. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO supervised employees of the defendant LENA JESS.
24. Defendant DEAN D'AMICO has the power to make binding decisions for defendant LENA JESS.
25. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO owns and/or operates the defendant LENA JESS.
26. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is the President of the defendant LENA JESS.
27. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO, is the Vice-President of the defendant LENA JESS.
28. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is a shareholder of the defendant LENA JESS.
29. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is a corporate officer of the defendant LENA JESS.
30. Upon information and belief, and at all time hereinafter mentioned, the defendant JANET D'AMICO is the Chief Executive Officer of the defendant LENA JESS.
31. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is an agent of the defendant LENA JESS.
32. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO has the authority over personnel decisions for the defendant LENA JESS.
33. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO has authority over payroll decisions for the defendant LENA JESS.

34. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO supervised employees of the defendant LENA JESS.
35. Defendant JANET D'AMICO has the power to make binding decisions for defendant LENA JESS.
36. Upon information and belief, defendant J&D was and still is a domestic corporation organized and existing pursuant to the laws of the State of New York.
37. Upon information and belief, defendant J&D's place of business was and still is 5640 Old Sunrise Highway, Massapequa, New York 11758.
38. Upon information and belief, defendant J&D was and still is engaged in the landscape design and construction business.
39. At all times hereinafter mentioned, defendant J&D was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).
40. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO owns and/or operates the defendant J&D.
41. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO is the President of the defendant J&D.
42. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO, is the Vice-President of the defendant J&D.
43. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO is a shareholder of the defendant J&D.
44. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO is a corporate officer of the defendant J&D.

45. Upon information and belief, and at all time hereinafter mentioned, the defendant DEAN D'AMICO is the Chief Executive Officer of the defendant J&D.
46. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO is an agent of the defendant J&D.
47. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO has the authority over personnel decisions for the defendant J&D.
48. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO has authority over payroll decisions for the defendant J&D.
49. Upon information and belief, and at all times hereinafter mentioned, the defendant DEAN D'AMICO supervised employees of the defendant J&D.
50. Defendant DEAN D'AMICO has the power to make binding decisions for defendant J&D.
51. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO owns and/or operates the defendant J&D.
52. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is the President of the defendant J&D.
53. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO, is the Vice-President of the defendant J&D.
54. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is a shareholder of the defendant J&D.
55. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is a corporate officer of the defendant J&D.

56. Upon information and belief, and at all time hereinafter mentioned, the defendant JANET D'AMICO is the Chief Executive Officer of the defendant J&D.
57. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO is an agent of the defendant J&D.
58. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO has the authority over personnel decisions for the defendant J&D.
59. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO has authority over payroll decisions for the defendant J&D.
60. Upon information and belief, and at all times hereinafter mentioned, the defendant JANET D'AMICO supervised employees of the defendant J&D.
61. Defendant JANET D'AMICO has the power to make binding decisions for defendant J&D.
62. At all times hereinafter mentioned, defendant DEAN D'AMICO was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).
63. At all times hereinafter mentioned, defendant JANET D'AMICO was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 190(3).
64. Defendants LENA JESS and J&D, both d/b/a D&D LANDSCAPE DESIGN & CONSTRUCTION, INC., comprise an "enterprise engaged in interstate commerce" and are joint employers of plaintiff and others similarly situated.
65. The defendant enterprise has (1) employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials

that have been moved in or produced for commerce by any person; and (2) an annual gross volume of sales in excess of \$500,000.

66. LENA JESS and J&D have a high degree of interrelated and unified operations, centralized control of labor relations, common control, common location, common business purpose, interrelated business goals and common ownership and management.
67. At all times hereinafter mentioned, defendants employed employees, including the plaintiff herein, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s)(A)(i).

FACTS

68. Plaintiff JOSE GAMEZ began his employment with Defendants as a laborer in or around July 2010.
69. His responsibilities included nonexempt work, including general landscaping and construction labor. Plaintiff was terminated in or around December 2014.
70. At all times hereinafter mentioned, Plaintiff was required to be paid overtime pay at the statutory rate of one and one-half (1 and 1/2) times his regular rate of pay after he had worked forty (40) hours in a work week.
71. Plaintiff routinely worked fifty (55) to sixty (66) hours per week with Defendants, typically working from 7 A.M until 6 P.M. five (5) to six (6) days per week. Plaintiff was routinely compensated at a flat rate of \$500 per week, regardless of the number of hours he worked.

72. Defendants failed to compensate Plaintiff for time worked in excess of forty (40) hours per week at a rate of at least one and one-half (1 and 1/2) times his regular hourly rate, throughout the term of his employment.
73. On numerous occasions, Plaintiff did not receive the thirty (30) minute uninterrupted meal break for employees who worked shifts in excess of six (6) hours that extend over the noonday meal period.
74. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the FLSA and NYLL by failing to maintain accurate time sheets, payroll records, and post compliance posters.
75. Defendants failed to provide the plaintiffs with written wage notices as required under the New York Wage Theft Prevention Act.
76. Defendants failed to provide Plaintiffs with written wage statements as required under New York Labor Law.

COLLECTIVE ACTION CLAIMS

77. Upon information and belief, there are approximately ten (10) or more current and former employees that are similarly situated to the plaintiff JOSE GAMEZ, who have been denied overtime compensation. The plaintiff JOSE GAMEZ represents other laborers and is acting on behalf of the defendant's current and former employees' interests as well as his own interests in bringing this action.
78. Plaintiff JOSE GAMEZ seeks to proceed as a collective action with regard to the First and Third Causes of Action, pursuant to 29 U.S.C. § 216(b) on behalf of himself and the following class of persons:

All persons who are currently, or have been employed by the defendants as laborers, at any time during the three (3) years prior to the filing of their respective consent forms.

79. Former and current employees similarly situated to plaintiff JOSE GAMEZ are readily identifiable and locatable through use of defendants' records. These similarly situated employees should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such notice, persons similarly situated to the plaintiff JOSE GAMEZ who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which have been unlawfully withheld from them by defendants.

AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFF JOSE GAMEZ,
AND THE FLSA COLLECTIVE CLASS,
A FLSA VIOLATION

80. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "79" of the Complaint, with the same force and effect, as if fully alleged herein.

81. Defendant employed plaintiff for workweeks longer than forty (40) hours and willfully failed to compensate the plaintiff for the time worked in excess of forty (40) hours per week, at a rate of at least one and one-half (1 and 1/2) times the regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

82. The complete records concerning the number of hours worked by the plaintiff as well as the compensation plaintiff received in workweeks in which excess hours were worked are in the exclusive possession and control of the defendants, and as such, the plaintiff is unable to state at this time the exact amount due and owing to him.

83. As a consequence of the willful underpayment of wages, alleged above, the plaintiff has incurred damages thereby and the defendant is indebted to him in the amount of the

unpaid overtime compensation, together with interest and liquidated damages, in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS JOSE GAMEZ
FOR FAILURE TO PAY OVERTIME,
A NYLL VIOLATION

84. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “83” of the Complaint, with the same force and effect, as if fully alleged herein.
85. Defendants employed plaintiff for workweeks longer than forty (40) hours and willfully failed to compensate the plaintiff for the time worked in excess of forty (40) hours per week, at a rate of at least one and one-half (1 and 1/2) times the regular hourly rate, in violation of the NYLL.
86. The complete records concerning the number of hours worked by the plaintiff as well as the compensation plaintiff received in workweeks in which excess hours were worked are in the exclusive possession and control of the defendants, and as such, the plaintiff is unable to state at this time the exact amount due and owing to him.
87. By the course of conduct set forth above, defendant has violated NYLL § 650 *et seq.*; 12 N.Y.C.R.R. § 142-1.4.
88. Defendant had a policy and practice of refusing to pay overtime compensation to its employees, which included plaintiff.
89. Defendant’s failure to pay overtime compensation to the plaintiff was willful within the meaning of NYLL § 663.
90. As a consequence of the willful underpayment of wages, alleged above, the plaintiff has incurred damages thereby and the defendant is indebted to him in the amount of the

unpaid overtime compensation and such other legal and equitable relief due to the defendant's unlawful and willful conduct, as the Court deems just and proper.

91. Plaintiff seeks recovery of liquidated damages, attorneys' fees, and costs to be paid by the defendant as provided by the NYLL.

**AS FOR A THIRD CAUSE OF ACTION
(Violation of Notice and Record Keeping Requirements, N.Y. Lab. Law § 195,
Brought by Plaintiffs)**

92. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "91" of the Complaint, with the same force and effect, as if fully alleged herein.

93. Defendants failed to supply each plaintiff with a notice as required by NYLL, Article 6, § 195, in English or in the language identified by each plaintiff as his primary language, containing employee's rate or rates of pay and the basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay, if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

94. Defendants failed to supply each plaintiff with an accurate statement of wages as required by NYLL § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates,

if applicable; the number of hours worked, including overtime hours worked, if applicable; deductions; and net wages.

95. Due to Defendants' violations of NYLL § 195, Plaintiffs are entitled to damages of fifty dollars for each workweek that defendants failed to provide plaintiffs with a wage notice, or a total of twenty-five hundred dollars, and damages of one hundred dollars for each workweek that defendants failed to provide plaintiffs with accurate wage statements, or a total of twenty-five hundred dollars, for each plaintiff, as provided by NYLL, Article 6, § 198, reasonable attorneys' fees, costs and injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, plaintiff JOSE GAMEZ, on behalf of himself and the putative FLSA Collective Class, prays for the following relief on the first cause of action:

- a. Certification of this action as a collective action brought pursuant to the FLSA, 29 USC § 216(b);
- b. Designation of the plaintiff as representative of the Class Members;
- c. Judgment against the defendants that the defendants' violations of the FLSA were willful;
- d. Judgment against the defendants that the defendants' violations of the NYLL were willful;
- e. Judgment against the defendants for the maximum penalties allowed by the NYLL;

- f. Judgment against the defendants for an amount equal to unpaid back wages at the applicable overtime rate;
- g. Judgment against the defendants for unpaid minimum wage;
- h. Liquidated damages at the applicable rate;
- i. To the extent liquidated damages are not awarded, an award of prejudgment interest;
- j. All costs and attorneys' fees incurred prosecuting these claims; and
- k. For such other relief as the Court deems just and equitable.

Date: November 1, 2016
Great Neck, New York

Jose G. Santiago
Jose G. Santiago, Esq.
jsantiago@mclaughlinstern.com
McLaughlin & Stern, LLP
1010 Northern Blvd., Suite 400
Great Neck, New York 11010
(516) 829-6900

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOSE GAMEZ, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff NASSAU
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
McLaughlin & Stern, LLP; 1010 Northern Blvd., Ste. 400, Great Neck, NY 11021, (516) 829-6900

DEFENDANTS

LENA JESS ENTERPRISES, INC. d/b/a D & D LANDSCAPE DESIGN & CONSTRUCTION, INC., J & D D'AMICO ENTERPRISES CORP., JANET D'AMICO, individually and DEAN D'AMICO, individual
County of Residence of First Listed Defendant NASSAU
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201 et seq.

Brief description of cause:
Failure to pay overtime

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER 16-CV-6361

DATE 11/16/2016 SIGNATURE OF ATTORNEY OF RECORD
/s Jose G. Santiago, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Jose G. Santiago, counsel for PLAINTIFF, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s Jose G. Santiago

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSE GAMEZ, on behalf of himself and all others similarly situated,

Plaintiff(s)

v.

LENA JESS ENTERPRISES, INC. d/b/a D & D LANDSCAPE DESIGN & CONSTRUCTION, INC., J & D D'AMICO ENTERPRISES CORP., JANET D'AMICO, individually, and DEAN

Defendant(s)

Civil Action No. 16-CV-6361

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LENA JESS ENTERPRISES, INC. 5640 Old Sunrise Highway Massapequa, New York 11758

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jose G. Santiago, Esq. McLaughlin & Stern, LLP 1010 Northern Blvd., Ste. 400 Great Neck, New York 11021 (516) 829-6900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 16-CV-6361

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOSE GAMEZ, on behalf of himself and all others similarly situated,

Plaintiff(s)

v.

LENA JESS ENTERPRISES, INC. d/b/a D & D LANDSCAPE DESIGN & CONSTRUCTION, INC., J & D D'AMICO ENTERPRISES CORP., JANET D'AMICO, individually, and DEAN

Defendant(s)

Civil Action No. 16-CV-6361

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Jose G. Santiago, Esq. McLaughlin & Stern, LLP 1010 Northern Blvd., Ste. 400 Great Neck, New York 11021 (516) 829-6900

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DOUGLAS C. PALMER CLERK OF COURT

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Defendant(s)

Civil Action No. 16-CV-6361

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) J & D D'AMICO ENTERPRISES CORP. 5640 Old Sunrise Highway Massapequa, New York 11758

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jose G. Santiago, Esq. McLaughlin & Stern, LLP 1010 Northern Blvd., Ste. 400 Great Neck, New York 11021 (516) 829-6900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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Defendant(s)

Civil Action No. 16-CV-6361

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Dean D'Amico 5640 Old Sunrise Highway Massapequa, New York 11758

A lawsuit has been filed against you.

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DOUGLAS C. PALMER CLERK OF COURT

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [D & D Landscape Design & Construction Facing FLSA Class Action](#)
