

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CLEMENT HENRY, on behalf of himself,  
individually, and on behalf of all others similarly-situated,

**COMPLAINT**

Plaintiff,

**Docket No.: 17-CV-5041**

-against-

Jury Trial Demanded

PRISHTINA CONSTRUCTION DESIGNS, INC., and  
FLAMUR PRISHTINA, individually,

Defendants.

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Plaintiff, CLEMENT HENRY (“Plaintiff”), on behalf of himself, individually, and on behalf of all others similarly-situated, (collectively as “FLSA Plaintiffs” and/or “Rule 23 Plaintiffs”), by and through his attorneys, BORRELLI & ASSOCIATES, P.L.L.C., as and for his Complaint against PRISHTINA CONSTRUCTION DESIGNS, INC. (“PCD”), and FLAMUR PRISHTINA (“Prishtina”), an individual, (together as “Defendants”), alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters as follows:

**NATURE OF THE CASE**

1. This is a civil action for damages and equitable relief based upon Defendants’ willful violations of Plaintiff’s rights guaranteed to him by: (i) the overtime provisions of the Fair Labor Standards Acts (“FLSA”), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160 and N.Y. Comp. Codes R. & Regs. (“NYCCRR”) tit. 12, § 142-2.2; (iii) the NYLL’s requirement that employers provide on each payday proper wage statements to their employees containing specific categories of accurate information, NYLL § 195(3); (iv) the NYLL’s requirement that employers furnish employees with a wage notice at the

time of hiring containing specific categories of accurate information, NYLL § 195(1); (v) the NYLL's requirement that employers pay wages to their employees who perform manual labor not less frequently than on a weekly basis, NYLL §191; (vi) the FLSA's anti-retaliation provision, 29 U.S.C. § 215(3); (vii) one of the NYLL's anti-retaliation provisions, N.Y. Lab. Law § 215(1); and (viii) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants - - a construction company and his former supervisor who is the company's principal - - as a laborer from in or about June 2011 to June 12, 2017. As described below, throughout the entirety of his employment, the Defendants willfully failed to pay Plaintiff the wages lawfully due to him under the FLSA and the NYLL. Specifically, the Defendants required Plaintiff to routinely work more than forty hours per workweek, but intentionally failed to compensate him at any rate of pay, and thus not at the statutorily-required overtime rate for each hour that he worked per week in excess of forty. Additionally, Defendants failed to provide Plaintiff with proper wage statements on each payday and failed to provide Plaintiff with a proper wage notice at the time of hiring, both as the NYLL requires. Furthermore, Defendants violated the NYLL by failing to pay Plaintiff, a manual laborer, all of his wages owed on at least as frequently as a weekly basis.

3. Defendants paid and treated all of their non-managerial construction laborer employees in the same manner.

4. Accordingly, Plaintiff brings this lawsuit against Defendants pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of Defendants' willful violations of the FLSA. Plaintiff

brings his claims under the NYLL on behalf of himself, individually, and on behalf of any FLSA Plaintiff, as that term is defined below, who opts-in to this action.

5. Plaintiff also brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure (“FRCP”) 23, on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable NYLL limitations period who suffered damages as a result of the Defendants’ violations of the NYLL and the supporting New York State Department of Labor regulations.

6. Furthermore, on an individual basis only, Plaintiff brings claims against Defendants for violating the anti-retaliation provisions of the FLSA and NYLL, as after Plaintiff complained to Defendants that they were not paying him overtime for all of his hours worked per week in excess of forty, Defendants retaliated by terminating his employment.

### **JURISDICTION AND VENUE**

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq.* The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1367 over all state law claims.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the acts and/or omissions comprising the claims for relief occurred within this judicial district.

### **PARTIES**

9. At all relevant times, Plaintiff was an “employee” entitled to protection as defined by the FLSA and the NYLL.

10. At all relevant times, Defendant PCD was and is a corporation organized under the laws of the State of New York, with its principal place of business located at 5223 Skillman Avenue, Woodside, New York, 11972.

11. At all relevant times, Defendant Prishtina was the principal shareholder and day-to-day overseer of PCD.

12. At all relevant times, Defendants were employers within the meaning of the FLSA, the NYLL, and the NYCCRR. Additionally, Defendant PCD's qualifying annual business exceeded and exceeds \$500,000, and it was engaged in interstate commerce within the meaning of the FLSA as it, on a daily basis, used goods, equipment, and other materials in the course of its business, such as, building materials, sheetrock, plywood, nail-guns, circle-saws, tools, and ladders, much of which originates in states other than New York, the combination of which subjects Defendant PCD to the FLSA's overtime requirements as an enterprise.

### **COLLECTIVE ACTION ALLEGATIONS**

13. Plaintiff seeks to bring this suit to recover from Defendants his full payment of all unpaid overtime compensation and liquidated damages under the applicable provisions of the FLSA, 29 U.S.C. § 216(b), individually, on his own behalf, as well as on behalf of those in the following collective:

Current and former employees of Defendants who, during the applicable FLSA limitations period, performed any work for Defendants as non-managerial construction laborers who give consent to file a claim to recover damages for overtime compensation that is legally due to them for time worked in excess of forty hours per week ("FLSA Plaintiffs").

14. Defendants treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: (1) performed similar tasks, as described in the "Background Facts" section

below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours each workweek; and (5) were not paid the required rate of one and one-half times their respective regular rates of pay for all hours worked over forty in a workweek.

15. At all relevant times, Defendants were aware of the requirement to pay Plaintiff and all FLSA Plaintiffs at an amount equal to one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet Defendants purposefully chose not to do so. Thus, Plaintiff and all FLSA Plaintiffs are victims of Defendants' pervasive practice of willfully refusing to pay their employees overtime compensation, in violation of the FLSA.

### **RULE 23 CLASS ALLEGATIONS**

16. In addition, Plaintiff seeks to maintain this action as a class action pursuant to FRCP 23(b)(3), individually, on his own behalf, as well as on behalf of those who are similarly-situated whom, during the applicable statutory period, Defendants also subjected to violations of the NYLL and the NYCCRR.

17. Under FRCP 23(b)(3), a plaintiff must plead that:

- a. The class is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class that predominate over any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;
- d. The representative will fairly and adequately protect the class; and
- e. A class action is superior to other methods of adjudication.

18. The Rule 23 Class that Plaintiff seeks to define includes:

Current and former employees of Defendants who performed any work for Defendants as non-managerial construction laborers during the statutory period within the State of New York, who: (1) did not receive compensation at the legally-required overtime rate of pay for each hour worked per week over forty; and/or (2) were not provided with accurate wage statements on each payday pursuant to NYLL § 195(3); and/or (3) were not provided with an accurate wage notice at the time of hiring pursuant to NYLL § 195(1); and/or (4) were not paid all wages owed on at least a weekly basis.

Numerosity

19. During the previous six years the Defendants have, in total, employed at least forty individuals that are putative members of this class.

Common Questions of Law and/or Fact

20. There are common questions of law and fact common to each and every Rule 23 Plaintiff, including but not limited to the following: (1) the duties that the Defendants required the Rule 23 Plaintiffs to perform; (2) the manner of compensating each Rule 23 Plaintiff; (3) whether Defendants required the Rule 23 Plaintiffs to work in excess of forty hours per week; (4) whether Defendants compensated the Rule 23 Plaintiffs at the statutorily required rate of one and one-half times their respective regular rates of pay for all hours worked per week over forty; (5) whether Defendants furnished the Rule 23 Plaintiffs accurate wage statements on each payday as NYLL §195(3) requires; (6) whether Defendants furnished the Rule 23 Plaintiffs with an accurate wage notice at the time of hire as NYLL § 195(1) requires; (7) whether Defendants paid the Rule 23 Plaintiffs all wages owed on at least weekly basis, as NYLL § 191 requires; (8) whether Defendants kept and maintained records with respect to each hour that the Rule 23 Plaintiffs worked; (9) whether Defendants kept and maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs; (10) whether Defendants maintain any

affirmative defenses with respect to the Rule 23 Plaintiffs' claims; (11) whether Defendants' actions were in violation of the NYLL and the NYCCRR; and (12) if so, what is the proper measure of damages.

Typicality of Claims and/or Defenses

21. As described in the facts section below, Defendants employed Plaintiff as a non-managerial construction laborer. Plaintiff's claims are typical of the claims of the Rule 23 Plaintiffs whom he seeks to represent, as Defendants failed to pay the Rule 23 Plaintiffs at their respective overtime rates of pay for all hours worked per week in excess of forty. Plaintiff and the Rule 23 Plaintiffs enjoy the same rights under the NYLL and the NYCCRR to be: (1) paid one and one-half times their respective rates of pay for all hours worked per week in excess of forty; (2) furnished with accurate wage statements on each payday; (3) furnished with accurate wage notices at the time of hire; and (4) paid all wages owed on at least a weekly basis.

22. Plaintiff and the Rule 23 Plaintiffs have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL and the NYCCRR, namely, under compensation due to Defendants' common policies, practices, and patterns of conduct. Thus, Plaintiff's claims and/or the Defendants' defenses to those claims are typical of the Rule 23 Plaintiffs' claims and the Defendants' defenses to those claims.

Adequacy

23. Plaintiff worked the same or similar hours as the Rule 23 Plaintiffs throughout his employment with Defendants. Furthermore, Defendants' treatment of Plaintiff was substantially-similar, if not identical, to Defendants' treatment of the Rule 23 Plaintiffs. Defendants routinely undercompensated Plaintiff and the Rule 23 Plaintiffs, failing to pay them at one and one-half times their regular rates of pay for all hours worked each week in excess of

forty. Defendants also failed to provide Plaintiff and the Rule 23 Plaintiffs with accurate wage statements on each payday or accurate wage notices at hire, nor did they pay them all wages owed on at least a weekly basis.

24. Plaintiff is no longer employed with the Defendants and thus has no fear of retribution from Defendants for his participation in this action. Plaintiff fully anticipates testifying under oath as to all of the matters raised in this Complaint and as to all matters that may be raised in Defendants' Answer. Thus, Plaintiff would properly and adequately represent the current and former employees whom Defendants similarly mistreated.

#### Superiority

25. Defendants treated Plaintiff and the Rule 23 Plaintiffs in a substantially similar manner. As such, the material facts concerning Plaintiff's claims are substantially similar, if not identical, to the material facts concerning the Rule 23 Plaintiffs' claims.

26. Any lawsuit brought by one of Defendants' non-managerial construction laborers for Defendants' violations of the NYLL and the NYCCRR would be practically identical to a suit brought by any other employee of Defendants working in that capacity for the same violation.

27. Accordingly, a class action lawsuit would be superior to any other method for protecting the Rule 23 Plaintiffs' rights.

28. In addition, Plaintiff's attorneys are qualified, experienced, and able to conduct this litigation. Plaintiff's attorneys' practice is concentrated primarily in the field of employment law and they have extensive experience in handling class action lawsuits arising out of employers' violations of the provisions of the NYLL and the NYCCRR at issue in this case.



**BACKGROUND FACTS**

29. Defendant PCD is a construction business that provides its services to customers throughout New York City and Westchester County, New York.

30. At all relevant times, Defendant Prishtina was and is the principal shareholder and day-to-day overseer of PCD, who in that capacity was responsible for determining employees' rates, frequency, and methods of pay and the hours that employees were required to work. Furthermore, Defendant Prishtina personally hired and fired Plaintiff and all other PCD employees.

31. Defendants employed Plaintiff to work as a construction worker from in or about June 2011 to June 12, 2017. Throughout his employment, Plaintiff's duties mainly consisted of manual labor including, but not limited to, carpentry, cabinetry, plastering, tilework, flooring, framing, hanging sheetrock, painting, plumbing, electrical work, carrying materials and tools, and keeping work areas clean. On a daily basis, Plaintiff performed this work using sheetrock, plywood, nail-guns, circle-saws, tools, and ladders. Plaintiff performed these tasks at different job sites primarily in Brooklyn and in Queens, but would occasionally perform these tasks in Manhattan and Westchester.

32. Throughout the entirety of his employment, Defendants required Plaintiff to work, and Plaintiff did work, from 8:30 a.m. to 6:30 p.m., six days per week, with a thirty-minute lunch break each day, for a total of fifty-seven hours per week.

33. Throughout the entirety of his employment, Defendants paid Plaintiff a flat weekly rate of \$720.00, which was intended to cover only the first forty hours that Plaintiff worked each week, and which makes Plaintiff's straight-time rate \$18.00 per hour.

34. Throughout his entire employment, Defendants did not pay Plaintiff at any rate of pay, let alone his overtime rate of pay of \$27.00 per hour, for any hours that he worked in excess of forty per week.

35. By way of example only, during the workweek of May 8 to May 14, 2017, Plaintiff worked from Monday May 8th through Saturday May 13th, from 8:30 a.m. to 6:30 p.m. on each of those days, with a thirty minute break each day, for a total of fifty-seven hours, and Defendants paid him \$18.00 per hour for only his first forty hours of work and nothing for his hours worked in excess of forty.

36. By way of another example, during the workweek of May 22 to May 28, 2017, Plaintiff worked from Monday May 22nd through Saturday May 27th from 8:30 a.m. to 6:30 p.m. on each of those days, with a thirty minute break each day, for a total of fifty-seven hours, and Defendants paid him \$18.00 per hour for only his first forty hours of work and nothing for his hours worked in excess of forty.

37. Defendants were required to pay Plaintiff on a weekly basis. Yet, Defendants would frequently delay his payment by one to three weeks after his pay was due. During the relevant time period, Defendants delayed Plaintiff's payment at least once each month, but often twice each month that Plaintiff worked.

38. On each occasion when they paid Plaintiff from approximately 2014 through 2017, Defendants did not provide Plaintiff with a wage statement that accurately reflected, *inter alia*, the amount of hours that he worked each week, his straight-time rate of pay for each hour worked up to forty per week, or his overtime rate of pay for each hour that he worked in excess of forty in a given workweek. Prior to 2014, Defendants paid Plaintiff entirely in cash and did not provide him with any wage statements at all.

39. Moreover, Defendants did not furnish Plaintiff at the time of his hire, or any time thereafter, with a wage notice that accurately stated, *inter alia*, his rate(s) of pay, including any overtime rate of pay.

40. Defendants treated Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs in the same manner described herein.

41. Defendants acted in the manner described herein so as to maximize their profits while minimizing their labor costs.

42. Every hour that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs worked was for Defendants' benefit.

43. On Friday, June 9, 2017, Plaintiff complained to Defendant Prishtina about Defendant Prishtina's failure to pay Plaintiff overtime compensation, as well as the fact that Defendant Prishtina delayed compensating Plaintiff for between one and three weeks at a time, once or twice a month. On the following Monday, June 12, 2017, Defendants terminated Plaintiff's employment without providing a reason.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS**

*Unpaid Overtime Under the FLSA*

44. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

45. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for any hours worked exceeding forty in a workweek.

46. As described above, Defendants are employers within the meaning of the FLSA, while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.

47. As also described above, Plaintiff and FLSA Plaintiffs worked in excess of forty hours in a workweek, yet Defendants failed to compensate Plaintiff and FLSA Plaintiffs in accordance with the FLSA's overtime provisions.

48. Defendants willfully violated the FLSA.

49. Plaintiff and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

50. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for Defendants' violations of the FLSA's overtime provisions.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS**

*Unpaid Overtime Under the NYLL and the NYCCRR*

51. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

52. NYLL § 160 and 12 NYCCRR § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for any hours worked exceeding forty in a workweek.

53. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action are employees within the meaning of the NYLL and the NYCCRR.

54. As also described above, Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action worked in excess of forty hours in a workweek, yet Defendants failed to compensate them in accordance with the NYLL's and the NYCCRR's overtime provisions.

55. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action are entitled to their overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

56. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action are also entitled to liquidated damages, interest, and attorneys' fees for Defendants' violations of the NYLL's and NYCCRR's overtime provisions.

**THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS**  
**Failure to Furnish Proper Wage Statements in Violation of the NYLL**

57. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

58. NYLL § 195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.

59. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action are employees within the meaning of the NYLL and the NYCCRR.

60. As also described above, Defendants failed to furnish Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action with wage statements on each payday accurately containing the criteria that the NYLL requires.

61. Prior to February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action in the amount of \$100 for each workweek after the violation occurred, up to the statutory cap of \$2,500.

62. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action in the amount of \$250 for each workday after the violation occurred, up to a statutory cap of \$5,000.

**FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS**

**Failure to Furnish Proper Wage Notice in Violation of the NYLL**

63. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if fully set forth herein.

64. NYLL § 195(1) requires that employers provide employees with a wage notice at the time of hire containing accurate, specifically enumerated criteria.

65. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action are employees within the meaning of the NYLL and the NYCCRR.

66. As also described above, Defendants failed to furnish Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action with accurate wage notices upon hire containing the criteria required under the NYLL.

67. Prior to February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action in the amount of \$50 for each workweek after the violation occurred, up to the statutory cap of \$2,500.

68. On or after February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action in the amount of \$50 for each workday after the violation occurred, up to the statutory cap of \$5,000.

**FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS**

**Failure to Pay Timely Wages in Violation of NYLL**

69. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

70. NYLL § 191(1) requires employers to pay “manual workers” all wages owed on at least as frequently as a weekly basis.

71. As described above, Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action were “manual workers” under the NYLL in that at least 25% of their work was spent performing manual tasks.

72. As also described above, Defendants failed to compensate Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action with all wages owed on at least as frequently as a weekly basis, in violation of NYLL § 191(1).

73. As a result, Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are entitled to liquidated damages in an amount equal to 100% of each late payment, as well as interest and attorneys’ fees.

**SIXTH CLAIM FOR RELIEF AGAINST DEFENDANTS**

**Retaliation in Violation of the FLSA, 29 U.S.C. § 215(3)**

74. Plaintiff, repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

75. Under FLSA § 215(a)(3), it is unlawful “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint . . . under . . . this chapter, or has testified or is about to testify in any such proceeding.”

76. As described above, Defendants are employers within the meaning of the FLSA, while Plaintiff is an employee within the meaning of the FLSA.

77. As also described above, after Plaintiff lodged a good faith complaint with Defendants about their violations of the provisions of the FLSA, Defendants retaliated by terminating Plaintiff's employment.

78. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the FLSA, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

79. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the FLSA, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which he is entitled to an award of monetary damages and other relief.

80. Additionally, Plaintiff is entitled to attorneys' fees, liquidated damages, and punitive damages for Defendants' malicious, willful, and wanton violations of the FLSA's anti-retaliation provision.

**SEVENTH CLAIM FOR RELIEF AGAINST DEFENDANTS**  
*Retaliation in Violation of the NYLL § 215(1)*

81. Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

82. Under NYLL § 215(1)(a), "[n]o employer or his or her agent, or the officer or agent of any corporation . . . shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer . . . that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter."



83. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff is an employee within the meaning of the NYLL and the NYCCRR.

84. As also described above, after Plaintiff lodged a good faith complaint with Defendants about their violations of the provisions of the NYLL and NYCCRR, Defendants retaliated by terminating Plaintiff's employment.

85. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYLL, Plaintiff has suffered, and continues to suffer, monetary and/or economic harm for which he is entitled to an award of monetary damages and other relief.

86. As a direct and proximate result of Defendants' unlawful retaliatory conduct in violation of the NYLL, Plaintiff has suffered, and continues to suffer, severe mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering, for which he is entitled to an award of monetary damages and other relief.

87. Additionally, Plaintiff is entitled to attorneys' fees, liquidated damages, interest, and punitive damages for Defendants' malicious, willful, and wanton violations of the NYLL's anti-retaliation provision.

88. Pursuant to NYLL § 215(2)(b), contemporaneous with the filing of this Complaint, Plaintiff is filing a Notice of Claim with the Office of the New York State Attorney General, thereby advising the aforementioned of his claim for retaliation under Section 215 of the NYLL.

**DEMAND FOR A JURY TRIAL**

89. Pursuant to FRCP 38(b), Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand a trial by jury in this action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand judgment against Defendants as follows:

a. A judgment declaring that the practices complained of herein are unlawful and in willful violation of the aforementioned United States and New York State laws;

b. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

c. An order restraining Defendants from any retaliation against Plaintiff, FLSA Plaintiffs, and/or Rule 23 Plaintiffs for participating in this litigation in any form or manner;

d. Designation of this action as an FLSA collective action on behalf of Plaintiff and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA Plaintiffs, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

e. Certification of the claims brought in this case under the NYLL and NYCCRR as a class action pursuant to FRCP 23;

f. All damages that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs have sustained as a result of Defendants' unlawful conduct, including all unpaid wages and any shortfall between wages paid and those due under the law that they would have received but for Defendants' unlawful payment practices;

g. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;

h. Awarding Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs their reasonable attorneys' fees, as well as their costs and disbursements incurred in connection with this action, including expert witness fees and other costs, and an award of a service payment to Plaintiff;

i. Designation of Plaintiff and his counsel as collective action representatives under the FLSA;

j. Designation of Plaintiff and his counsel as class representatives under Rule 23;

k. All compensatory damages that Plaintiff has individually sustained as a result of the Defendants' unlawful retaliatory conduct, including back pay, front pay, damages to compensate Plaintiff for harm to his professional and personal reputation and loss of career fulfillment, emotional distress damages, general and special damages for lost compensation and employee benefits that he would have received but for the Defendants' unlawful conduct, and any other out-of-pocket losses that Plaintiff has incurred or will incur;

l. Punitive damages, as provided by law, in connection with Plaintiff's individual retaliation claims;


m. Pre-judgment and post-judgment interest, as provided by law; and

n. Granting Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs any other and further relief as this Court finds necessary and proper.

Dated: August 25, 2017  
Great Neck, New York

Respectfully submitted,

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MICHAEL J. BORRELLI, ESQ (MB 8533)

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CLEMENT HENRY, on behalf of himself,
individually, and on behalf of all others
similarly-situated,

Plaintiff(s)

v.

PRISHTINA CONSTRUCTION DESIGNS, INC., and
FLAMUR PRISHTINA, individually,

Defendant(s)

Civil Action No. 17-CV-5041

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PRISHTINA CONSTRUCTION DESIGNS, INC.
5223 Skillman Avenue
Woodside, New York, 11972

FLAMUR PRISHTINA
5223 Skillman Avenue
Woodside, New York, 11972

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:

Caitlin Duffy, Esq.
Michael J. Borrelli, Esq.
Alexander T. Coleman, Esq.
Borrelli & Associates, P.L.L.C.
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021

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

Civil Action No. 17-CV-5041

**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:

# 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 CLEMENT HENRY

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**Borrelli & Associates, P.L.L.C.**  
1010 Northern Boulevard, Suite 328  
Great Neck, New York 11021

### DEFENDANTS PRISHTINA CONSTRUCTION DESIGNS, INC., and FLAMUR PRISHTINA, individually,

County of Residence of First Listed Defendant \_\_\_\_\_  
*(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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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"/> 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <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

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Fair Labor Standards Act - 29 U.S.C. §207(a)**  
Brief description of cause:  
**Defendants' failure to pay overtime wages**

### 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 \_\_\_\_\_

DATE 3/25/17 SIGNATURE OF ATTORNEY OF RECORD 

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, Caitlin Duffy, Esq., counsel for Clement Henry, 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:

Not applicable.

**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? No
  - b) Did the events of 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: 



**Complete and Mail To:**  
**BORRELLI & ASSOCIATES, P.L.L.C.**  
**Attn: CLEMENT HENRY, et al. v. PRISHTINA CONSTRUCTION AND DESIGN, et al.**  
**1010 Northern Boulevard, Suite 328**  
**Great Neck, New York 11021**  
**Tel: (516) 248-5550**  
**Fax: (516) 248-6027**

**CONSENT TO JOIN COLLECTIVE ACTION**

I hereby consent to join the lawsuit, entitled CLEMENT HENRY, on behalf of himself and all those similarly situated, v. PRISHTINA CONSTRUCTION AND DESIGN, et al. Docket No.: \_\_\_\_\_ brought pursuant to the Fair Labor Standards Act, the New York State Labor Law, and the New York Code of Rules and Regulations.

By signing below, I state that I am currently or was formerly employed by the Defendants at some point during the previous six years. I elect to join this case in its entirety with respect to any wage and hour-related claims asserted in the complaint filed in this matter and/or under any Federal and State law, rule or regulation.

I hereby designate Borrelli & Associates, P.L.L.C. ("Plaintiffs' Counsel") to represent me for all purposes of this action.

I also designate CLEMENT HENRY, the class representative who brought the above-referenced lawsuit, as my agent to make decisions on my behalf concerning the litigation and the method and manner of conducting the litigation. I also state that I have entered into my own retainer agreement with Plaintiffs' Counsel or consent to the retainer agreement entered into by MR. HENRY, concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

\_\_\_\_\_

Date

Clement Henry  
Signature

CLEMENT HENRY  
Full Legal Name (Print)

\_\_\_\_\_

Telephone Number

Street Address

\_\_\_\_\_

Email Address

City, State, Zip Code

\_\_\_\_\_

Dates of Employment with Defendants

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Employee Claims Prishtina Construction Denied Him Due Wages](#)

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