

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X No.:  
CERLIN A. OSARIO MELGAR, *on behalf of himself*  
*and all others similarly situated,*

Plaintiff,

-against-

**COMPLAINT**

RECOMMENDATION CONTRACTING, INC.,  
and RICHARD FRANCO,

***Jury Demanded***

Defendants.  
-----X

Plaintiff, on behalf of himself and all others similarly situated, alleges upon knowledge as to himself and his own actions, and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. This is an individual and collective action to recover unpaid overtime pay, statutory damages, attorneys' fees, and all other relief permitted by law due to Defendants' failure to comply with the requirements and obligations of the Fair Labor Standards Act of 1938 29 U.S.C. §§ 201 *et seq.* ("FLSA"), New York Labor Law Article 19 §§ 650 *et seq.*, New York Labor Law Article 6 §§ 190 *et seq.* ("NYLL"), and 12 New York Codes, Rules and Regulations ("NYCRR") §§ 142-1.1 *et seq.*, from the date that is three years prior to the filing of this action through and including the date of judgment.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff brings his claims under the FLSA, a federal statute.

3. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367 because the state claims are so related to the federal claims that they form a part of the same case or controversy between Plaintiff and Defendants.
4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims took place within this judicial district.

**PARTIES**

5. Plaintiff CERLIN A. OSARIO MELGAR, at all relevant times, was an adult individual residing in the County of Nassau and State of New York.
6. Defendant RECOMMENDATION CONTRACTING, INC ("RC"), at all relevant times, was a for-profit corporation organized and existing under the laws of the State of New York, with its principal place of business located at 123 Clark Avenue, Massapequa, New York 11758.
7. At all relevant times, RC was in the business of operating a home remodeling construction company. Its business was, and is, engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 203, and has, upon information and belief, annual gross sales of at least \$500,000.
8. Defendant RICHARD FRANCO, at all relevant times, was an adult individual residing in the County of Nassau and State of New York. Franco was a corporate officer, director, manager, and one of the ten largest shareholders of RC. Franco was also one of Plaintiff's direct supervisors, and regularly exercised day-to-day operational control of RC, in that Franco assigned work to Plaintiff, scheduled Plaintiff's hours, hired and fired RC

- employees, and set the rate and method of payment to Plaintiff and RC employees.
9. Defendants directly employed Plaintiff, individually and as joint employers, within the meaning of the FLSA and NYLL in that they controlled the means and manner of production of Plaintiff's work.
  10. The individually named defendant, as an officer, director, shareholder, manager, or agent of RC, had control over the day-to-day employment practices of RC and was responsible for the wage and hour practices complained of herein; therefore, he is an "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d), and the NYLL.
  11. Plaintiff was Defendants' employee as defined by § 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1), and the NYLL because Defendants regularly suffered or permitted Plaintiff to work.

**ALLEGATIONS COMMON TO ALL CLAIMS**

12. Defendants employed Plaintiff as a construction helper from in or about April 2016 to November 17, 2016. His work was performed in the normal course of RC's business and was integral to the business of RC.
13. As an employee of Defendants, Plaintiff regularly worked 51-58.5 hours per week according to the following work schedule: Monday through Saturday from 8:00 a.m. to 5:00 p.m. with a 30-minute meal break, and oftentimes, additionally, on Sunday from 8:00 a.m. to 4:00 p.m. with a 30-minute meal break
14. As an employee of Defendants, Plaintiff was paid an hourly rate of pay of \$18.00 per hour.
15. As an employee of Defendants, Plaintiff often worked in excess of 40 hours per week as

set forth above, yet Defendants failed to pay Plaintiff the overtime premium of one-half times his regular rate of pay for all hours worked in excess of 40 hours in a workweek as required by the FLSA and NY Labor Law. In Plaintiff's case, said overtime premium was equal to \$9.00 per hour for all hours worked over 40 in any given workweek, or approximately \$99.00 to \$166.50 per week based upon the work schedule set forth above.

16. During the course of Plaintiff's employment, Defendants failed to maintain accurate and sufficient compensation and time records with respect to Plaintiff and, upon information and belief, did not keep a record of Plaintiff's compensation or working time at all. As a result of such failure, Defendants have failed to make, keep, and preserve records with respect to Plaintiff sufficient to determine the wages, hours, and other conditions of employment of Plaintiff in violation of the FLSA, 29 U.S.C. §§ 211(c) & 215(a)(5), and NY Labor Law § 195.
17. Defendants never provided a yearly wage notice and acknowledgment to Plaintiff as required by the New York Wage Theft Prevention Act.
18. Defendants never provided a compliant weekly wage statement to Plaintiff as required by the New York Wage Theft Prevention Act.
19. The foregoing conduct constitutes a willful violation of the FLSA and the NY Labor Law.
20. Due to Defendants' willful violations of the FLSA and NY Labor Law, Plaintiff is entitled to recover from the Defendants his unpaid overtime compensation, statutory penalties pursuant to the New York Wage Theft Prevention Act and liquidated damages of 100% any amounts found to be due and owing as compensation, reasonable attorneys'

fees, pre- and post-judgment interest, and the costs and disbursements of this action.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

21. In addition to his individual claims, Plaintiff brings Count I, as set forth below, as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all non-exempt employees employed by Defendants on or after the date that is three years before the filing of the Complaint in this case to the date of judgment; but, insofar as the statute of limitations is equitably tolled as a result of Defendants' failure to post required notices or otherwise inform the Non-Exempt Employees of their rights under the FLSA, on behalf of all Non-Exempt Employees who were employed by Defendants on or after the date that is six years before the filing of the complaint in this case to the date of judgment.
22. Plaintiff's individual consent to sue under 29 U.S.C. § 216 is annexed hereto.
23. Plaintiff can remember approximately 12 Non-Exempt Employees, including Milton, with whom he worked who all were paid in the same manner as Plaintiff and who, likewise, worked in excess of 40 hours per week without receiving overtime compensation of one and one-half times their regular rate of pay.
24. At all relevant times, the Non-Exempt Employees are and have been similarly situated, have had substantially similar job requirements and pay provisions, and are and have been subject to Defendants' uniform policies that have resulted in Defendants willfully failing to pay them premium overtime pay.
25. The claims of the Plaintiff stated herein are substantially the same as those of the the Non-Exempt Employees.

**COUNT I: FLSA OVERTIME VIOLATIONS**

26. Defendants' failure to pay premium overtime pay to Plaintiff and the Non-Exempt Employees for all hours worked over 40 in any given workweek violates the FLSA, 29 U.S.C. §§ 207(a)(1) & 215(a)(2).
27. Defendants' violation of the FLSA in this regard was willful.
28. Defendants are liable to Plaintiff and the Non-Exempt Employees for premium overtime pay, plus liquidated damages in the amount of the overtime pay wrongfully withheld, pre- and post-judgment interest, attorneys' fees, and the costs and disbursements of this action.

**COUNT II: NY LABOR LAW OVERTIME VIOLATIONS**

29. Defendants' failure to pay premium overtime pay to Plaintiff for all hours worked over 40 in any given workweek violates NY Labor Law § 160 and 12 N.Y. C.R.R. § 142-2.2.
30. Defendants' violation of the NY Labor Law in this regard was willful.
31. Defendants are liable to Plaintiff for premium overtime pay, plus liquidated damages in the amount of 100% of the overtime pay wrongfully withheld, pre- and post-judgment interest, attorneys' fees, and the costs and disbursements of this action.

**COUNT III: NEW YORK WAGE THEFT PREVENTION ACT**

32. Defendants did not provide Plaintiff with a yearly wage statement in compliance with the requirements of NY Labor Law § 195(1) and are, therefore, liable to the Plaintiff for the damages set forth in NY Labor Law § 198(1-b), post-judgment interest, attorneys' fees, and the costs and disbursements of this action.
33. Defendants also did not provide Plaintiff with a weekly wage statement in compliance

with the requirements of NY Labor Law § 195(3) and are, therefore, liable to the Plaintiff for the damages set forth in NY Labor Law §198(1-d), post-judgment interest, attorneys' fees, and the costs and disbursements of this action.

**JURY DEMAND**

34. Plaintiff, on behalf of himself and the Non-Exempt Employees, demands a trial by jury on all issues in this action.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Non-Exempt Employees, prays for relief and prays that the Court:

- A. Designate this action a collective action on behalf of the Non-Exempt Employees and promptly authorize Plaintiff's attorneys to issue notice under 29 U.S.C. § 216(b) to all Non-Exempt Employees, employed any time on or after the date that is three years (plus any applicable tolling period) prior to the date of any such order (hereinafter "the Liability Period"), apprising them of this action and of their right to opt-in to this lawsuit if they were not properly paid premium overtime pay during any part of the Liability Period;
- B. Order Defendants to file with this Court, and to furnish to Plaintiff's counsel, a verified list of all names, and the last known addresses, telephone numbers, email addresses and alternative contact information of all Non-Exempt Employees who were employed by Defendants any time during the Liability Period;
- C. Order Defendants to conspicuously post notice in each of their business locations, in a place determined by the Court to be readily accessible to all Non-Exempt Employees,

apprising them of this action and of their right to opt-in to this lawsuit if they were not properly paid premium overtime pay during any part of the Liability Period;

- D. Enter judgment in favor of the Plaintiff and each Non-Exempt Employee and each class member on each or any count of this Complaint for all compensatory damages and, where applicable, liquidated damages, attorneys' fees, pre- and post-judgment interest, and the costs and disbursements of this action; and,
- E. Grant to Plaintiff, and each Non-Exempt Employee, any other and further relief that to the Court seems just and proper.

Dated: Uniondale, New York  
February 2, 2018

Respectfully submitted,



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Eric S. Tilton  
Tilton Beldner LLP  
626 Rxr Plaza  
Uniondale, New York 11556  
(631) 629-5291  
etilton@tiltonbeldner.com



**CIVIL COVER SHEET**

JS 44 (Rev. 01/29/2018)

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.)

<p><b>I. (a) PLAINTIFFS</b>                  CERLIN A. OSARIO MELGAR</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>NASSAU</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)                  TILTON BELDNER LLP, 626 RXR Plaza                  Uniondale, NY 11556 (631) 629-5291</p>	<p><b>DEFENDANTS</b>                  RECOMMENDATION CONTRACTING, INC. and RICHARD FRANCO</p> <p>County of Residence of First Listed Defendant <u>NASSAU</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)                  UNKNOWN</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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Click here for: Nature of Suit Code Descriptions.

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)	<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
	<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 Tort Contract Product Liability <input type="checkbox"/> 196 Franchises	<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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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
	<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	<b>SOCIAL SECURITY</b>
	<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	<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	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<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>PRISONER PETITIONS</b>	<b>IMMIGRATION</b>	<b>FEDERAL TAX SUITS</b>	
		<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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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. 207

Brief description of cause:  
Failure to pay overtime premium pay

**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: 2/2/18

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, Eric S. Tilton, 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: *seeks certification of collective action (29 USC 216)*

**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?  Yes  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  No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  Yes  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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?  Yes  No

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

**BAR ADMISSION**

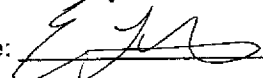
I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- 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: 

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

CERLIN A. OSARIO MELGAR, on behalf of himself
and all others similarly situated

Plaintiff(s)

v.

RECOMMENDATION CONTRACTING, INC.
and RICHARD FRANCO

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The above named Defendants
123 Clark Avenue
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:

Tilton Beldner LLP
626 Rxr Plaza
Uniondale, NY 11556

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. \_\_\_\_\_

**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:

**CONSENT TO JOIN COLLECTIVE ACTION**  
**Pursuant to Fair Labor Standards Act 29 U.S.C. §216(b)**

1. I, Cerlin Osario, consent and agree to pursue my claims arising out of uncompensated work time, including minimum wage and overtime, as an employee of Recommendation Contracting, Inc., and its affiliates and officers.
  
2. I understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et seq. I hereby consent, agree and opt-in to become a Plaintiff herein and be bound to any judgment by the Court or any settlement of this action.
  
3. I hereby designate Eric S. Tilton, Esq., of the law firm of Tilton Beldner LLP, to represent me for all purposes in this action and as the collective action representative for this case.

(Signature)  Date: 2/1/18

Print Name: Cerlin Osario

# 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 Recommendation Contracting Owes Unpaid Overtime](#)

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