

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN PORTILLA, on behalf of himself,
individually, and on behalf of all others similarly-situated,

Plaintiff,

-against-

BRIDGEHAMPTON STONE, INC., and BRIDGEHAMPTON
STONE & BRICK, INC., and DANIEL MESSINA,
an individual, and CESAR VILLANSACA, an individual,

Defendants.

-----X

COMPLAINT

Docket No.:

Jury Trial Demanded

JOHN PORTILLA (“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 BRIDGEHAMPTON STONE, INC. (“BSI”), and BRIDGEHAMPTON STONE & BRICK, INC. (“BSBI”), and DANIEL MESSINA (“Messina”), an individual, and CESAR VILLANSACA (“Villansaca”), 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 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 furnish employees with a wage notice at the time of hiring containing specific categories of accurate information, NYLL § 195(1); (iv) 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); and (v) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants—a construction company, that company's successor-in-interest, and their principal shareholders and day-to-day overseers—as a construction laborer from in or about September 2011 to February 16, 2017. During his employment, and as relevant to this Complaint, within the six-year period pre-dating the commencement of this action, Defendants required Plaintiff to work, and Plaintiff did work, at least fifty-two and one-half hours per week. However, Defendants paid Plaintiff an hourly rate for only the first forty hours that he worked each week, and thus failed to pay him at any rate of pay, let alone his overtime rate of pay, for all hours that he worked over forty each week.

3. Additionally, Defendants failed to provide Plaintiff with a proper wage notice at the time of his hiring or with accurate wage statements on each payday as the NYLL requires.

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

5. 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.

6. 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.

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)(1), as one or more of the Defendants resides in this judicial district, and 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 BSI was and is a corporation organized under the laws of the State of New York with its principal place of business located at 5 Windemere Court, Speonk, New York, 11972.

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

12. At all relevant times, Defendant BSBI was and is a corporation organized under the laws of the State of New York with its principal place of business located at 1 Brian Court, Middle Island, New York, 11953.

13. At all relevant times, Defendant Villansaca was the principal shareholder and day-to-day overseer of BSBI.

14. At all relevant times, Defendants were employers within the meaning of the FLSA, the NYLL, and the NYCCRR. Additionally, Defendant BSI's and Defendant BSBI's qualifying annual business exceeded and exceeds \$500,000, and each was engaged in interstate commerce within the meaning of the FLSA as each used goods, equipment, and other materials in the course of its business, such as cement, stones, tools, and ladders, much of which originates in states other than New York, the combination of which subjects Defendant BSI and Defendant BSBI to the FLSA's overtime requirements as enterprises.

COLLECTIVE ACTION ALLEGATIONS

15. 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").

16. 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.

17. 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

18. In addition, Plaintiff seeks to maintain this action as a class action pursuant to FRCP 23(b)(3), 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.

19. 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.

20. 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 ; (2) were not provided with an accurate wage notice at the time of hire pursuant to NYLL § 195(1); and (3) were not provided with accurate wage statements on each payday pursuant to NYLL § 195(3).

Numerosity

21. 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

22. 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 with an accurate wage notice at the time of hire as NYLL § 195(3) requires; (6) whether Defendants furnished the Rule 23 Plaintiffs with accurate wage statements on each payday as NYLL § 195(3) requires; (7) whether Defendants kept and maintained records with respect to each hour that the Rule 23 Plaintiffs worked; (8) whether Defendants kept and maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs; (9) whether Defendants maintain any affirmative defenses with respect to the Rule 23 Plaintiffs' claims; (10) whether Defendants' actions were in violation of the NYLL and the NYCCRR; and (11) if so, what is the proper measure of damages.

Typicality of Claims and/or Defenses

23. 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 notices at the time of hire; and (3) furnished with accurate wage statements on each payday.

24. 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

25. 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 actual 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 an accurate wage notice at the time of hire or with accurate wage statements on each payday.

26. 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

27. 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.

28. 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.

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

30. 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

31. From at least six years prior to the commencement of this action until on or about July 26, 2016, Defendant BSI was engaged in the construction business, and provided its services to customers in Long Island and New York City.

32. During at least that period of time, Defendant Messina was the principal shareholder and day-to-day overseer of BSI, who in that capacity was responsible for determining employees' rates and methods of pay and the hours that employees were required to work. Furthermore, Defendant Messina personally hired Plaintiff and all other BSI employees.

33. On or about July 26, 2016, Defendant Messina sold Defendant BSI's construction business to Defendant Villansaca, who reincorporated the business as BSBI.

34. Defendant BSBI, as the successor entity of Defendant BSI, assumed liability for all debts, legal obligations and claims against Defendant BSI.

35. The reincorporated business, BSBI, continued to employ Plaintiff and all other persons employed as construction laborers by BSI at the time of the sale of the business, and BSBI has continued and continues to provide its construction services to customers in Long Island and New York City.

36. Defendant Villansaca is the principal shareholder and day-to-day overseer of BSBI who in that capacity is responsible for determining employees' rates and methods of pay and the hours that employees are required to work. Furthermore, Defendant Villansaca personally hired all BSBI employees after the date of sale, and personally fired Plaintiff and any other BSBI employees whose employment has been terminated since then.

37. Defendants employed Plaintiff to work as a construction worker at BSI and BSBI, collectively, from in or about September 2011 to February 16, 2017. Throughout his employment, Plaintiff's duties mainly consisted of preparing and grading the sites of masonry work, laying cement, setting and mortaring bricks, stones, and similar materials, carrying materials and tools, and keeping work areas clean. Plaintiff primarily performed these tasks at different job sites in Long Island and in New York City.

38. Throughout the entirety of his employment, first for BSI and continuing for BSBI, Plaintiff worked from 6:30 a.m. to 5:30 p.m., five days per week, with a thirty-minute lunch break each day, for a total of fifty-two and one-half hours per week.

39. Throughout the entirety of his employment, first for BSI and continuing for BSBI, as reflected on his paystubs, Defendants paid Plaintiff an hourly rate of \$17.00 for only the first forty hours that Plaintiff worked each week.

40. Throughout his entire employment, Defendants did not pay Plaintiff at any rate of pay, let alone his overtime rate of pay of \$25.50 per hour, for any hours that he worked in excess of forty per week.

41. Plaintiff worked more than forty hours in all workweeks in which Defendants employed him. For example, during the workweek of June 12, 2016 to June 18, 2016, Plaintiff worked fifty-two and one-half hours and Defendants paid him \$17.00 per hour for only his first forty hours of work. As a second example, during the workweek of February 5, 2017 to February 11, 2017, Plaintiff worked fifty-two and one-half hours and Defendants paid him \$17.00 per hour for only his first forty hours of work. Defendants did not compensate Plaintiff at any rate of pay for any hours that he worked in excess of forty in either of those weeks.

42. Defendants paid Plaintiff on a weekly basis.

43. On each occasion when they paid Plaintiff, Defendants did not provide Plaintiff with a wage statement that accurately reflected, *inter alia*, the amount of hours that he worked each week, or his overtime rates of pay for each hour that he worked in excess of forty in a given workweek.

44. 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.

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

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

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

48. On October 13, 2015, a prior legal action was commenced against Defendant BSI and Defendant Messina in the United States District Court for the Eastern District of New York in a case entitled "Juan Mayancela v. Bridgehampton Stone, Inc. and Daniel Messina," under Docket Number 15-cv-05866 (SJF)(AYS).

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime Under the FLSA

49. 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.

50. 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.

51. 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.

52. 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.

53. Defendants willfully violated the FLSA.

54. 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.

55. 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

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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 Notice in Violation of the NYLL

62. 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.

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

64. 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.

65. 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, or at any time thereafter, containing the criteria required under the NYLL.

66. 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.

67. 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 day after the violation occurred, up to the statutory cap of \$5,000.

FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS

Failure to Furnish Proper Wage Statements in Violation of the NYLL

68. 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.

69. 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.

70. 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.

71. 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 containing the criteria that the NYLL requires.

72. 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.

73. 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.

DEMAND FOR A JURY TRIAL

74. Pursuant to Federal Rule of Civil Procedure 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 a 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' 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 costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, 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. Pre-judgment and post-judgment interest, as provided by law; and
- l. Granting Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs any other and further relief as this Court finds necessary and proper.

Dated: April 28, 2017
Great Neck, New York

Respectfully submitted,

BORRELLI & ASSOCIATES, P.L.L.C.
Attorneys for Plaintiff
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021
Tel. (516) 248-5550
Fax. (516) 248-6027

/s/ Shaun M. Malone
SHAUN M. MALONE, ESQ (SM 1543)
ALEXANDER T. COLEMAN, ESQ (AC 8151)
MICHAEL J. BORRELLI, ESQ (MB 8533)

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

JOHN PORTILLA, on behalf of himself, individually,
and on behalf of all others similarly-situated,

Plaintiff(s)

v.

BRIDGEHAMPTON STONE, INC., and
BRIDGEHAMPTON STONE & BRICK, INC., and
DANIEL MESSINA, an individual, and CESAR
VILLANSACA, an individual,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bridgehampton Stone, Inc., 112 Maple Lane, Bridgehampton, New York 11932
Bridgehampton Stone & Brick, Inc., 1 Brian Court, Middle Island, New York 11953
Daniel Messina, 112 Maple Lane, Bridgehampton, New York 11932
Cesar Villansaca, 1 Brian Court, Middle Island, New York 11953

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: Borrelli & Associates, P.L.L.C.
1010 Northern Boulevard
Great Neck, New York 11021
(516) 248-5550

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:

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
 John Portilla, on behalf of himself,
 individually, and on behalf of all others similarly-situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Borrelli & Associates, P.L.L.C.
 1010 Northern Boulevard
 Great Neck, New York 11021 (516) 248-5550

DEFENDANTS
 Bridgehampton Stone, Inc., and Bridgehampton
 Stone & Brick, Inc., and Daniel Messina,
 an individual, and Cesar Villansaca, an individual,
 County of Residence of First Listed Defendant Suffolk
 (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)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FOREFEITURE/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	<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	<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	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<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	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	<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"/> 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))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<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):
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: 04/28/2017 SIGNATURE OF ATTORNEY OF RECORD: Shaun M. Malone *Shaun M. Malone*

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, Shaun M. Malone, 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: 

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

JOHN PORTILLA

Plaintiff

v.

BRIDGEHAMPTON STONE, INC., et al.

Defendant

)
)
)
)
)

Case No. 17-CV-2549

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

Plaintiff

Date: 04/28/2017

/s/ Michael J. Borrelli

Attorney's signature

Michael J. Borrelli, Esquire (MB 8533)

Printed name and bar number

Borrelli & Associates, P.L.L.C.
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021

Address

mjb@employmentlawyernewyork.com

E-mail address

(516) 248-5550

Telephone number

(516) 248-6027

FAX number

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

JOHN PORTILLA

Plaintiff

v.

BRIDGEHAMPTON STONE, INC., et al.

Defendant

)
)
)
)
)

Case No. 17-CV-2549

APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

Plaintiff

Date: 04/28/2017

/s/ Alexander T. Coleman

Attorney's signature

Alexander T. Coleman, Esquire (AC 8151)

Printed name and bar number

Borrelli & Associates, P.L.L.C.
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021

Address

atc@employmentlawyernewyork.com

E-mail address

(516) 248-5550

Telephone number

(516) 248-6027

FAX number

Complete and Mail To:
BORRELLI & ASSOCIATES, P.L.L.C.
Attn: **JOHNNY E. PORTILLA, et al. v. BRIDGEHAMPTON STONE & BRICK, INC, 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 JOHNNY E. PORTILLA, on behalf of himself and all those similarly situated, v. Bridgehampton Stone & Brick, Inc., 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 JHONNY PORTILLA, 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. PORTILLA, concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

27/4/17
Date


Signature

Johnny E. Portilla
Full Legal Name (Print)



Completar y Enviar a:
BORRELLI & ASSOCIATES, P.L.L.C.
Attn: JHONNY E. PORTILLA, et al. v. BRIDGEHAMPTON STONE & BRICK, INC, et al.
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021
Tel: (516) 248-5550
Fax: (516) 248-6027

CONSENTIMIENTO PARA UNIRSE A UNA ACCIÓN COLECTIVA

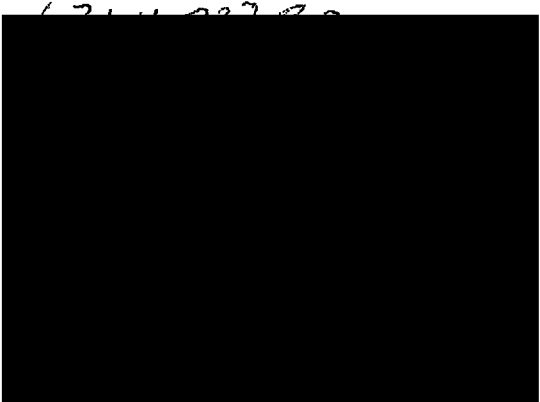
Doy mi consentimiento para unirme a la demanda titulada, JOHNNY E. PORTILLA, y en nombre de todos aquellos similarmente mismo situado, V BRIDGEHAMPTON STONE & BRICK, INC, et al., Docket No.: _____ interpuestos en virtud del Fair Labor Standards Act, la Ley de Trabajo del Estado de Nueva York, y el Código de Nueva York de las Reglas y Reglamentos.

Al firmar abajo, yo declaro que estoy actualmente o fui anteriormente un empleado para los acusados en algún momento durante los seis años anteriores. Yo dentro a este caso en su totalidad con respecto a cualquier salario y reclamaciones relacionadas con la hora en la denuncia presentada en la queja sometida o bajo cualquier ley Federal y estatal, regla o reglamento.

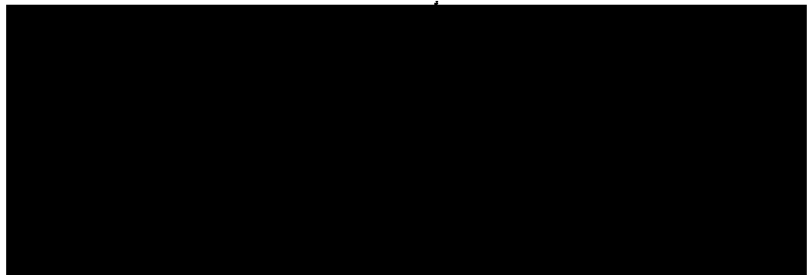
Por la presente designo a Borrelli & Associates, P.L.L.C. ("Abogados de los Demandantes") que me represente a todos los efectos de esta acción.

Tambien designo a JOHNNY PORTILLA, el representante de la clase quien trajo esta demanda, como mi agente para hacer las decisiones en mi nombre sobre la demanda y el método y la forma de llevar acabo esta demanda. Yo tambien decalro que he entrado en mi propio acuerdo de retención con los Abogados de los Demandantes o doy mi consentimiento de los acuerdos de retención suscritos por el Señor PORTILLA relativa a los honorarios de abogados y costos, y todas mas cuestiones relativas a esta demanda.

27/4/17
Fecha



[Handwritten Signature]
Firma
Johnny E Fram Portillo Pulla
Nombre Completo



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Construction Worker Piles Unpaid Wage Claims Against Bridgehampton Stone](#)
