

MICHAEL FAILLACE & ASSOCIATES, P.C.
Michael A. Faillace
60 East 42nd Street, Suite 2540
New York, New York 10165
Telephone: (212) 317-1200
Facsimile: (212) 317-1620
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**
-----X

JOSE SANDOVAL, *individually and on
behalf of others similarly situated,*

Plaintiff,

-against-

C. BASTOS CONSTRUCTION, INC. (d/b/a
CARLOS BASTOS CONSTRUCTION) and
CARLOS BASTOS,

Defendants.
-----X

COMPLAINT

**COLLECTIVE ACTION UNDER
29 U.S.C. § 216(b)**

ECF Case

Plaintiff Jose Sandoval (“Plaintiff Sandoval”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., upon his knowledge and belief, and as against Defendants C. Bastos Construction, Inc. (d/b/a Carlos Bastos Construction) and Carlos Bastos (collectively the “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Sandoval was an employee of C. Bastos Construction, Inc. (“Defendant Corporation”) and Carlos Bastos.
2. Defendants own, operate, and/or control a construction company located at 114 Primrose Avenue, Mt. Vernon, New York 10550 under the name “Carlos Bastos Construction.”

3. Upon information and belief, Defendant Carlos Bastos serves or served as owner, manager, principal or agent of Defendant C. Bastos Construction, Inc. and upon information and belief, this corporate entity operates or operated the construction company known as “Carlos Bastos Construction” as a joint or unified enterprise.

4. Plaintiff Sandoval was employed to work as a construction worker.

5. Plaintiff Sandoval regularly worked for Defendants in excess of 40 hours per week, without appropriate minimum wage or overtime compensation for any of the hours that he worked each week.

6. Rather, Defendants failed to maintain accurate records of hours worked and failed to pay Plaintiff Sandoval appropriately for any hours worked.

7. Defendants’ conduct extended beyond Plaintiff Sandoval to all other similarly situated employees.

8. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Sandoval and other employees to work in excess of forty (40) hours per week without providing the minimum wage, overtime and spread of hours compensation required by federal and state law and regulations.

9. Plaintiff Sandoval now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. (“FLSA”), the New York Labor Law (“NYLL”) §§190 and 650 et seq., (the “NYLL”), and "overtime wage order" respectively codified at N.Y.C.R.R. Tit. 12 § 146 including applicable liquidated damages, interest, attorneys’ fees and costs.

10. Plaintiff Sandoval seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 29 U.S.C. §§ 201 *et seq.* (FLSA); and 28 U.S.C. § 1367(a) (supplemental jurisdiction over state law claims).

12. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, defendants maintain their headquarters and offices within this district, and Defendants operate a construction company located in this district. Further, Plaintiff Sandoval was employed by Defendants in this district.

THE PARTIES

Plaintiff Jose Sandoval

13. Plaintiff Sandoval is an adult individual residing in Westchester County, New York.

14. Plaintiff Sandoval was employed by Defendants from approximately 2009 until on or about May 23, 2015.

15. Plaintiff Sandoval consents to being a party plaintiff pursuant to 29 U.S.C. 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. 216(b).

Defendants

16. At all times relevant to this complaint, Defendants owned, operated, and/or controlled a construction company located at 114 Primrose Avenue, Mt. Vernon, New York 10550, under the name “Carlos Bastos Construction”.

17. Upon information and belief, C. Bastos Construction, Inc. is a corporation organized and existing under the laws of the State of New York.

18. Upon information and belief, it maintains its principal place of business at 114 Primrose Avenue, Mt. Vernon, New York 10550.

19. Defendant Carlos Bastos is an individual engaging in business in this judicial district during the relevant time period.

20. Defendant Carlos Bastos is sued individually in his capacity as, on information and belief, an owner, officer and/or agent of Defendant Corporation.

21. Upon information and belief, Defendant Carlos Bastos possesses or possessed operational control over Defendant Corporation, possesses or possessed an ownership interest in Defendant Corporation, and controls or controlled significant functions of Defendant Corporation.

22. Upon information and belief, Defendant Carlos Bastos determined the wages and compensation of the employees of Defendants, including Plaintiff Sandoval, and established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

23. As alleged above, Defendants operate a construction company located in Mt. Vernon, New York.

24. Defendants maintain, as their principal place of business, a centralized office located at 114 Primrose Avenue, Mt. Vernon, New York 10550.

25. Upon information and belief, Defendant Carlos Bastos possessed operational control over defendant Corporation, possessed an ownership interest in defendant Corporation, and controlled significant functions of defendant Corporation.

26. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

27. Each Defendant possesses substantial control over Plaintiff Sandoval's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Sandoval, and all similarly situated individuals referred to herein.

28. Defendants jointly employed Plaintiff Sandoval, and all similarly situated individuals, and were his (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

29. In the alternative, Defendants constitute a single employer of Plaintiff Sandoval and/or similarly situated individuals.

30. Upon information and belief, Individual Defendant Carlos Bastos operates defendant Corporation as either an alter ego of himself, and/or fails to operate defendant Corporation as an entity legally separate and apart from himself by, among other things:

- a. failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;

- b. defectively forming or maintaining Defendant Corporation by, among other things, failing to hold annual meetings or maintaining appropriate corporate records;
- c. transferring assets and debts freely as between all Defendants;
- d. operating Defendant Corporation for his own benefit as the sole or majority shareholder;
- e. operating Defendant Corporation for his own benefit and maintaining control over it as a closed corporation or closely held controlled entity;
- f. intermingling assets and debts of his own with Defendant Corporation; and
- g. other actions evincing a failure to adhere to the corporate form.

31. At all relevant times, Defendants were Plaintiff Sandoval's employers within the meaning of the FLSA and NYLL.

32. Defendants had the power to hire and fire Plaintiff Sandoval, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for his services.

33. In each year from 2010 to 2015, defendants, both separately and jointly, had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

34. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. For example, numerous items that were used in the construction company on a daily basis, such as paint and sandpaper, were produced outside of the State of New York.

Plaintiff Jose Sandoval

35. Plaintiff Sandoval is a former employee of defendants, primarily employed in performing the duties of a construction worker.

36. Plaintiff Sandoval seeks to represent a class of similarly situated individuals under 29 U.S.C.216 (b).

37. Plaintiff Sandoval was employed by Defendants from approximately 2009 until on or about May 23, 2015.

38. At all times relevant to this complaint, Plaintiff Sandoval was an employee of Defendants employed to work as a construction worker.

39. Plaintiff Sandoval's work duties required neither discretion nor independent judgment.

40. Plaintiff Sandoval regularly handled goods in interstate commerce, such as cement, construction tools, sandpaper and other supplies produced outside of the State of New York.

41. Throughout his employment with Defendants, Plaintiff Sandoval regularly worked in excess of 40 hours per week.

42. During the months from approximately May through October of each of the relevant years of his employment (November 2010 until May 23, 2015), Plaintiff Sandoval worked from approximately 7:00 a.m. until on or about 3:00 p.m. Mondays through Saturdays (typically 48 hours per week).

43. However, from approximately October through on or about April of each year of the relevant years of his employment (November 2010 until May 23, 2015), Plaintiff Sandoval worked from approximately 7:00 a.m. until on or about 6:00 p.m. Mondays through Saturdays and from approximately 8:00 a.m. until on or about 2:00 p.m. on Sundays (typically 72 hours per week).

44. In addition, Defendants required Plaintiff Sandoval to perform his duties outlined above in construction projects around the United States.

45. Specifically, Plaintiff Sandoval worked on projects in Tallahassee, Florida from approximately May 2013 until on or about November 2013, in the State of Texas from approximately November 2013 until on or about January 2014, in Boston, Massachusetts from approximately January 2015 until on or about April 2015, and in Utica, New York in the month of November 2015.

46. Throughout his employment with defendants, Plaintiff Sandoval was paid his wages in cash.

47. From approximately November 2010 until on or about May 23, 2015, Defendants paid Plaintiff Sandoval \$15.00 per hour.

48. Plaintiff Sandoval did not receive any pay for the whole month of May 2015.

49. Defendants only granted Plaintiff Sandoval a 15 to 20-minute meal period each day.

50. Plaintiff Sandoval was not required to keep track of his time, nor to his knowledge did defendants utilize any time tracking device, such as sign in sheets or punch cards, to accurately reflect his actual hours worked.

51. Defendants did not provide Plaintiff Sandoval with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

52. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Sandoval regarding overtime and wages under the FLSA and NYLL.

53. Defendants did not provide any notice to Plaintiff Sandoval, in English and in Spanish (Plaintiff Sandoval's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

54. Defendants required Plaintiff Sandoval to purchase "tools of the trade" with his own funds—including seven pairs of protection glasses, 168 pairs of gloves, and two pairs of boots.

Defendants' General Employment Practices

55. Defendants regularly required Plaintiff Sandoval to work in excess of forty (40) hours per week without paying him the minimum and overtime wages.

56. At all times relevant to this complaint, Defendants maintained a policy and practice of requiring Plaintiff Sandoval and all similarly situated employees to work in excess of forty (40) hours per week without paying them appropriate minimum wages and overtime compensation, as required by federal and state laws.

57. Defendants failed to post required wage and hour posters in the workplace, and did not provide Plaintiff Sandoval and all similarly situated employees with statutorily required wage and hour records or statements of their pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of the employees' relative lack of sophistication in wage and hour laws.

58. Defendants willfully disregarded and purposefully evaded the recordkeeping requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets and payroll records.

59. Defendants did not provide Plaintiff Sandoval and all similarly situated employees with any document or other statement accurately accounting for their actual hours worked and setting forth the overtime wage rate.

60. Plaintiff Sandoval and all similarly situated employees were paid their wages in cash.

61. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Sandoval (and similarly situated individuals) worked, and to avoid paying Plaintiff Sandoval properly for (1) his full hours worked, (2) the minimum wage and (3) for overtime due.

62. Plaintiff Sandoval's experience is representative of all those who were similarly situated, who have worked for defendants, who were paid in cash and never received any document or statement that stated the rate of pay or actual number of hours worked.

63. Defendants failed to provide Plaintiff Sandoval and other employees with wage statements, at the time of each payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part the net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked, as required by NYLL §195(3).

64. Defendants failed to provide Plaintiff Sandoval and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as meals, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

65. Plaintiff Sandoval brings his FLSA minimum wage, overtime and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons (the "FLSA Class"), *i.e.*, persons who are or were employed by Defendants or any of them, on or after the date that is three years before the filing of the complaint in this case (the "FLSA Class Period").

66. At all relevant times, Plaintiff Sandoval and other members of the FLSA Class were similarly situated in that they had substantially similar job requirements and pay provisions, and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans including willfully failing and refusing to pay them the required minimum wage, overtime wage and willfully failing to keep records required by the FLSA.

67. The claims of Plaintiff Sandoval stated herein are similar to those of the other similarly situated employees.

FIRST CAUSE OF ACTION **VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA**

68. Plaintiff Sandoval repeats and realleges all paragraphs above as though fully set forth herein.

69. At all times relevant to this action, Defendants were Plaintiff Sandoval's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d).

70. Defendants had the power to hire and fire Plaintiff Sandoval (and the FLSA class members), control the terms and conditions of employment, and determine the rate and method of any compensation in exchange for employment.

71. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

72. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

73. Defendants failed to pay Plaintiff Sandoval (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

74. Defendants' failure to pay Plaintiff Sandoval (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

75. Plaintiff Sandoval (and the FLSA Class members) were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA

76. Plaintiff Sandoval repeats and realleges all paragraphs above as though fully set forth herein.

77. Defendants, in violation of the FLSA, failed to pay Plaintiff Sandoval (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate

of pay for each hour worked in excess of forty hours in a workweek, in violation of 29 U.S.C. § 207 (a)(1).

78. Defendants' failure to pay Plaintiff Sandoval (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

79. Plaintiff Sandoval (and the FLSA Class members) were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK MINIMUM WAGE RATE

80. Plaintiff Sandoval repeats and realleges all paragraphs above as though fully set forth herein.

81. At all times relevant to this action, Defendants were Plaintiff Sandoval's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Sandoval (and the FLSA Class members), control terms and conditions of employment, and determine the rates and methods of any compensation in exchange for employment.

82. Defendants, in violation of the NYLL, paid Plaintiff Sandoval (and the FLSA Class members) less than the minimum wage in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor.

83. Defendants' failure to pay Plaintiff Sandoval (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

84. Plaintiff Sandoval (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
VIOLATION OF THE OVERTIME PROVISIONS OF
THE NEW YORK STATE LABOR LAWS

85. Plaintiff Sandoval repeats and realleges all paragraphs above as though fully set forth herein.

86. Defendants, in violation of the NYLL and associated rules and regulations, failed to pay Plaintiff Sandoval (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor.

87. Defendants failed to pay Plaintiff Sandoval (and the FLSA Class members) in a timely fashion, as required by Article 6 of the New York Labor Law.

88. Defendants' failure to pay Plaintiff Sandoval (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

89. Plaintiff Sandoval (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(VIOLATION OF THE NOTICE AND RECORDKEEPING
REQUIREMENTS OF THE NEW YORK LABOR LAW)

90. Plaintiff Sandoval repeats and re-alleges all paragraphs above as though fully set forth herein.

91. Defendants failed to provide Plaintiff Sandoval with a written notice, in English and in Spanish (Plaintiff Sandoval's primary language), of his rate of pay, regular pay day, and such other information as required by NYLL §195(1).

92. Defendants are liable to Plaintiff Sandoval in the amount of \$5,000, together with

costs and attorneys' fees.

SIXTH CAUSE OF ACTION
(VIOLATION OF THE WAGE STATEMENT PROVISIONS
OF THE NEW YORK LABOR LAW)

93. Plaintiff Sandoval repeats and re-alleges all paragraphs above as though set forth fully herein.

94. Defendants did not provide Plaintiff Sandoval with a wage statement with each payment of wages, as required by NYLL 195(3).

95. Defendants are liable to Plaintiff Sandoval in the amount of \$5,000, together with costs and attorneys' fees.

SEVENTH CAUSE OF ACTION
(RECOVERY OF EQUIPMENT COSTS)

96. Plaintiff Sandoval repeats and re-alleges all paragraphs above as though set forth fully herein.

97. Defendants required Plaintiff Sandoval to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform his job, such as GLOVES AND PROTECTIVE EYEWEAR, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

98. Plaintiff Sandoval was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Sandoval respectfully requests that this Court enter judgment against Defendants:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the pendency of this action, and permitting them promptly to file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Sandoval and the FLSA class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Sandoval and the FLSA class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Sandoval's and the FLSA class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Sandoval and the FLSA class members;

(f) Awarding Plaintiff Sandoval and the FLSA class members damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiff Sandoval and the FLSA class members liquidated damages in an amount equal to 100% of their damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Sandoval and the members of the FLSA Class;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Sandoval and the members of the FLSA Class;

(j) Declaring that Defendants violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiff Sandoval's compensation, hours, wages and any deductions or credits taken against wages;

(k) Declaring that Defendants violated the timely payment provisions of the NYLL as to Plaintiff Sandoval and the members of the FLSA Class;

(l) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Sandoval and the FLSA Class members;

(m) Awarding Plaintiff Sandoval and the FLSA class members damages for the amount of unpaid minimum and overtime wages, damages for any improper deductions or credits taken against wages, under the NYLL as applicable;

(n) Awarding Plaintiff Sandoval and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(o) Awarding Plaintiff Sandoval and the FLSA class members damages for Defendants' failure to pay Plaintiff in a timely fashion, as required by NYLL § 191;

(p) Awarding Plaintiff Sandoval and the FLSA class members pre-judgment and post-judgment interest as applicable;

(q) Awarding Plaintiff Sandoval and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(r) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(s) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Sandoval demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
November 19, 2016

By: /s/ Michael Faillace
Michael Faillace

MICHAEL FAILLACE & ASSOCIATES, P.C.
60 East 42nd Street, Suite 2540
New York, New York 10165
Telephone: (212) 317-1200
Facsimile: (212) 317-1620
Attorneys for Plaintiffs

Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42nd Street, Suite 2540
New York, New York 10165

Telephone: (212) 317-1200
Facsimile: (212) 317-1620

Faillace@employmentcompliance.com

October 18, 2016

BY HAND

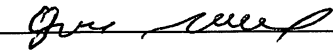
TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: Jose Sandoval

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: 

Date / Fecha: 18 de octubre de 2016

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Carlos Bastos Construction Knocked with Unpaid Overtime Class Action](#)
