

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE A. SORTO, on behalf of himself and all others similarly situated, and JOSE A. SORTO RAMOS, HENRY ZELAYA, and ERIK RIOS, individually,	:
	:
Plaintiffs,	:
- against -	:
	:
LEGACY LANDSCAPING, INC. d/b/a LEGACY LANDSCAPING, and GREGG FOWLER,	:
	:
Defendants.	:
-----	X

Case No.: 17 Civ. 5599

COMPLAINT

Plaintiffs Jose A. Sorto, on behalf of himself and all other similarly situated, and Jose A. Sorto Ramos, Henry Zelaya, and Erik Rios (collectively “Plaintiffs”), by and through their attorneys, Shulman Kessler LLP, complaining of the Defendants Legacy Landscaping, Inc. d/b/a Legacy Landscaping and Gregg Fowler (“Defendants”), allege as follows:

PRELIMINARY STATEMENT

1. This lawsuit seeks to recover unpaid overtime compensation, minimum wages, and other wages for Plaintiffs and their similarly situated co-workers who have worked for Defendants as laborers.

2. Plaintiffs bring this action seeking monetary damages and affirmative relief based upon Defendants’ violations of the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, *et seq.*, the New York Labor Law (“NYLL”), and other appropriate rules, regulations, statutes and ordinances.

3. Defendants operate a landscaping company within the State of New York. Plaintiffs have been employed by Defendants, at various points in time, as laborers, who regularly worked over 40 hours per week, but were not compensated properly for the overtime hours worked.

4. Defendants also failed to pay their laborers for the hours worked during the portal time from their last assigned landscaping job until the time they left Defendants' yard.

5. Accordingly, Defendants maintained a policy and practice whereby they failed to pay Plaintiffs overtime wages, by failing to attribute the portal-to-portal time at the conclusion of their workday toward the hours worked each workweek in violation of the FLSA and NYLL.

6. Accordingly, Plaintiffs are entitled to the unpaid overtime wages for all hours worked in excess of 40 each workweek, including the portal-to-portal time.

7. Plaintiffs are also entitled to the unpaid wages for the portal-to-portal time worked each workweek.

8. Plaintiff Jose A. Sorto brings this action on behalf of himself and all similarly situated current and former laborers of Defendant Legacy Landscaping, Inc. pursuant to the FLSA.

9. Plaintiff Jose A. Sorto also seeks permission to give notice of this action pursuant to 29 U.S.C. § 216(b) to all persons who are presently, or have at any time during the 3 years immediately preceding the filing of this action, worked for Defendant Legacy Landscaping, Inc. as a laborer.

JURISDICTION & VENUE

10. Jurisdiction of the Court over this controversy is based upon 29 U.S.C. § 201, *et seq.*, 28 U.S.C. §§ 1331 and 1337 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

11. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

12. At all times herein mentioned, Defendant Legacy Landscaping, Inc. is a domestic corporation doing business in the State of New York.

13. Defendant Legacy Landscaping, Inc. does business in the State of New York, within the Eastern District of New York, maintaining its principle place of business at 2341 Harrison Avenue, Baldwin, New York 11510.

14. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

THE PARTIES

Plaintiff Jose A. Sorto

15. Plaintiff Jose A. Sorto is a resident of the County of Suffolk, State of New York.

16. At all times relevant to the Complaint, Plaintiff Jose A. Sorto has been an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

17. At all times relevant, Plaintiff Jose A. Sorto has been employed by Defendants as a laborer.

18. Plaintiff Jose A. Sorto expressed his consent to make these claims against Defendant Legacy Landscaping, Inc. by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

Plaintiff Jose A. Sorto Ramos

19. Plaintiff Jose A. Sorto Ramos is a resident of the County of Suffolk, State of New York.

20. At all times relevant to the Complaint, Plaintiff Jose A. Sorto Ramos has been an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law

§ 190(2).

21. At all times relevant, Plaintiff Jose A. Sorto Ramos has been employed by Defendants as a laborer.

22. Plaintiff Jose A. Sorto Ramos expressed his consent to make these claims against Defendant Legacy Landscaping, Inc. by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

Plaintiff Henry Zelaya

23. Plaintiff Henry Zelaya is a resident of the County of Suffolk, State of New York.

24. At all times relevant to the Complaint, Plaintiff Henry Zelaya was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

25. At all times relevant, Plaintiff Henry Zelaya was employed by Defendants as a laborer.

26. Plaintiff Henry Zelaya expressed his consent to make these claims against Defendant Legacy Landscaping, Inc. by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

Plaintiff Erik Rios

27. Plaintiff Erik Rios is a resident of the County of Nassau, State of New York.

28. At all times relevant to the Complaint, Plaintiff Erik Rios was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e) and N.Y. Lab. Law § 190(2).

29. At all times relevant, Plaintiff Erik Rios was employed by Defendants as a laborer.

30. Plaintiff Erik Rios expressed his consent to make these claims against Defendant Legacy Landscaping, Inc. by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

Defendant Legacy Landscaping, Inc.

31. Upon information and belief, Defendant Legacy Landscaping, Inc. was and still is a domestic corporation organized and existing pursuant to the laws of the State of New York.

32. Upon information and belief, Defendant Legacy Landscaping, Inc.'s principal place of business was and still is located at 2341 Harrison Avenue, Baldwin, New York 11510.

33. Upon information and belief, and at all times hereinafter mentioned, Defendant Legacy Landscaping, Inc. was and still is engaged in the landscaping business.

34. Upon information and belief, Defendant Legacy Landscaping, Inc. was and still is doing business as Legacy Landscaping.

35. At all times hereinafter mentioned, the activities of Defendant Legacy Landscaping, Inc. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

36. At all relevant times, Defendant Legacy Landscaping, Inc. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

37. At all times hereinafter mentioned, Defendant Legacy Landscaping, Inc. employed employees, including Plaintiffs, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

38. Defendant Legacy Landscaping, Inc.'s annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii) each year from in or about September 2014 through the present.

39. At all times hereinafter mentioned, Defendant Legacy Landscaping, Inc. was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

Defendant Gregg Fowler

40. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler owns and/or operates Defendant Legacy Landscaping, Inc.

41. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is the President of Defendant Legacy Landscaping, Inc.

42. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is the Vice-President of Defendant Legacy Landscaping, Inc.

43. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is a shareholder of Defendant Legacy Landscaping, Inc.

44. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is a corporate officer of Defendant Legacy Landscaping, Inc.

45. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is the Chief Executive Officer of Defendant Legacy Landscaping, Inc.

46. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler is an agent of Defendant Legacy Landscaping, Inc.

47. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler has the authority over personnel decisions for Defendant Legacy Landscaping, Inc.

48. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler has the authority over payroll decisions for Defendant Legacy Landscaping, Inc.

49. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler supervises employees of the Defendant Legacy Landscaping, Inc.

50. Upon information and belief, and at all times hereinafter mentioned, Defendant Gregg Fowler has the authority to hire and fire employees for Defendant Legacy Landscaping, Inc.

51. Defendant Gregg Fowler has the power to make binding decisions for Defendant Legacy Landscaping, Inc.

52. Defendant Gregg Fowler has the power to transfer the assets or liabilities of Defendant Legacy Landscaping, Inc.

53. Defendant Gregg Fowler has the power to declare bankruptcy on behalf of Defendant Legacy Landscaping, Inc.

54. Defendant Gregg Fowler has the power to enter into contracts on behalf of Defendant Legacy Landscaping, Inc.

55. At all times hereinafter mentioned, Defendant Gregg Fowler was an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

FLSA COLLECTIVE ACTION CLAIMS

56. Plaintiff Jose A. Sorto brings the First and Third Causes of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of himself and all similarly situated persons who work or have worked for Defendant Legacy Landscaping, Inc. as a laborer within the last 3 years and who elect to opt-in to this action.

57. Upon information and belief, there are approximately more than 25 current and former laborers that are similarly situated to Plaintiff Jose A. Sorto who were denied overtime compensation and minimum wages.

58. Plaintiff Jose A. Sorto represents other laborers, and is acting on behalf of Defendant Legacy Landscaping, Inc.'s current and former laborers' interests as well as his own interests in bringing this action.

59. Defendants unlawfully required Plaintiffs and other individuals employed as laborers to work in excess of 40 hours per week without paying them overtime compensation at a rate of at least 1 and ½ times their regular hourly rate.

60. Defendants unlawfully denied Plaintiffs and other individuals employed as laborers payment of minimum wages for the portal-to-portal travel time they worked for Defendants in violation of 29 C.F.R. § 785.38.

61. Plaintiff Jose A. Sorto seeks to proceed as a collective action with regard to the First and Third Causes of Action, pursuant to 29 U.S.C. § 216(b) on behalf of himself and the following class of persons:

All laborers who are currently or have been employed by Defendants (hereinafter referred to as the "FLSA Collective") at any time during the 3 years prior to the filing of their respective consent forms (hereinafter referred to as the "Collective Period").

62. Defendants were aware or should have been aware that the law required it to pay their laborers, including Plaintiff Jose A. Sorto and the FLSA Collective: (1) an overtime premium of 1 and ½ times their regular rate of pay for all work-hours Defendants suffered or permitted them to work in excess of 40 per workweek; and (2) minimum wages for the portal-to-portal time they worked for Defendants. Upon information and belief, Defendants applied the same unlawful policies and practices to all of their laborers.

63. The FLSA Collective is readily identifiable and locatable through the use of the Defendants' records. The FLSA Collective should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendant Legacy Landscaping, Inc.

INDIVIDUAL FACTUAL ALLEGATIONS

Plaintiff Jose A. Sorto

64. Plaintiff Jose A. Sorto was employed by Defendants from in or about May 2006 through the present.

65. Plaintiff Jose A. Sorto has been an employee of Defendants working under their direct supervision.

66. At all times hereinafter mentioned, Plaintiff Jose A. Sorto was required to be paid overtime pay by Defendants at the statutory rate of 1 and 1/2 times, his regular rate of pay after he had worked 40 hours in a workweek.

67. During most workweeks from approximately April 15th through August 31st of each year between approximately 2012 through in or about the present, Plaintiff Jose A. Sorto worked approximately 57 hours, while employed by Defendants.

68. During most workweeks from approximately March 20th through April 14th and September 1st through December 18th of each year between approximately 2011 through in or about the present, Plaintiff Jose A. Sorto worked approximately 47.5 hours, while employed by Defendants.

69. Defendants failed to compensate Plaintiff Jose A. Sorto for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times his regular hourly rate throughout the entire term of his employment with Defendants.

70. Defendants failed to compensate Plaintiff Jose A. Sorto with any wages for the travel time between his last assigned job each workday to Defendants' yard, and any additional time spent at the yard before he left each workday throughout his employment for Defendants, in violation of 29 C.F.R. § 785.38.

71. Defendants failed to furnish Plaintiff Jose A. Sorto with a wage notice in 2012 through 2014 as was required by the NYLL.

72. Defendants failed to furnish Plaintiff Jose A. Sorto with an accurate statements of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid throughout his employment for Defendants each workweek.

73. Upon information and belief, Defendants did not keep accurate records of hours worked by Plaintiff Jose A. Sorto.

Plaintiff Jose A. Sorto Ramos

74. Plaintiff Jose A. Sorto Ramos has been employed by Defendants from in or about May 2010 through the present.

75. Plaintiff Jose A. Sorto Ramos has been an employee of Defendants working under their direct supervision.

76. At all times hereinafter mentioned, Plaintiff Jose A. Sorto Ramos was required to be paid overtime pay by Defendants at the statutory rate of 1 and 1/2 times, his regular rate of pay after he had worked 40 hours in a workweek.

77. During most workweeks from approximately April 15th through August 31st of each year between approximately September 2011 through in or about the present, Plaintiff Jose A. Sorto Ramos worked approximately 57 hours, while employed by Defendants.

78. During most workweeks from approximately March 20th through April 14th and September 1st through December 18th of each year between approximately September 2011 through in or about the present, Plaintiff Jose A. Sorto Ramos worked approximately 47.5 hours, while employed by Defendants.

79. Defendants failed to compensate Plaintiff Jose A. Sorto Ramos for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times his regular hourly rate between approximately September 2011 and the present.

80. Defendants failed to compensate Plaintiff Jose A. Sorto Ramos with any wages for the travel time between his last assigned job each workday to Defendants' yard, and any additional time spent at the yard before he left each workday throughout his employment for Defendants, in violation of 29 C.F.R. § 785.38.

81. Defendants failed to furnish Plaintiff Jose A. Sorto Ramos with a wage notice in 2012 through 2014 as was required by the NYLL.

82. Defendants failed to furnish Plaintiff Jose A. Sorto Ramos with an accurate statements of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid throughout his employment for Defendants each workweek.

83. Upon information and belief, Defendants did not keep accurate records of hours worked by Plaintiff Jose A. Sorto Ramos.

Plaintiff Henry Zelaya

84. Plaintiff Henry Zelaya was employed by Defendants from in or about June 2013 through in or about April 2017.

85. Plaintiff Henry Zelaya was an employee of Defendants working under their direct supervision.

86. At all times hereinafter mentioned, Plaintiff Henry Zelaya was required to be paid overtime pay by Defendants at the statutory rate of 1 and 1/2 times, his regular rate of pay after he had worked 40 hours in a workweek.

87. During most workweeks from approximately April 15th through August 31st of each year between approximately June 2013 through 2016, Plaintiff Henry Zelaya worked approximately 57 hours, while employed by Defendants.

88. During most workweeks from approximately March 20th through April 14th of each year starting in June 2013 through April 2017 and September 1st through December 18th of each year between approximately 2013 through 2016, Plaintiff Henry Zelaya worked approximately 47.5 hours, while employed by Defendants.

89. Defendants failed to compensate Plaintiff Henry Zelaya for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times his regular hourly rate throughout his employment for Defendants.

90. Defendants failed to compensate Plaintiff Henry Zelaya with any wages for the travel time between his last assigned job each workday to Defendants' yard, and any additional time spent at the yard before he left each workday throughout his employment for Defendants, in violation of 29 C.F.R. § 785.38.

91. Defendants failed to furnish Plaintiff Henry Zelaya with a wage notice in 2013 through 2014 as was required by the NYLL.

92. Defendants failed to furnish Plaintiff Henry Zelaya with an accurate statements of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

93. Upon information and belief, Defendants did not keep accurate records of hours worked by Plaintiff Henry Zelaya.

Plaintiff Erik Rios

94. Plaintiff Erik Rios was employed by Defendants from in or about March 2017 through May 25, 2017.

95. Plaintiff Erik Rios was an employee of Defendants working under their direct supervision.

96. At all times hereinafter mentioned, Plaintiff Erik Rios was required to be paid overtime pay by Defendants at the statutory rate of 1 and 1/2 times, his regular rate of pay after he had worked 40 hours in a workweek.

97. During most workweeks from approximately April 15, 2017 through May 25, 2017, Plaintiff Erik Rios worked approximately 57 hours, while employed by Defendants.

98. During most workweeks from approximately March 20, 2017 through April 14, 2017, Plaintiff Erik Rios worked approximately 47.5 hours, while employed by Defendants.

99. Defendants failed to compensate Plaintiff Erik Rios for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times his regular hourly rate throughout the entire term of his employment with Defendants.

100. Defendants failed to compensate Plaintiff Erik Rios with any wages for the travel time between his last assigned job each workday to Defendants' yard, and any additional time spent at the yard before he left each workday throughout his employment for Defendants, in violation of 29 C.F.R. § 785.38.

101. Defendants failed to furnish Plaintiff Erik Rios with a wage notice upon being hired as is required by the NYLL.

102. Defendants failed to furnish Plaintiff Erik Rios with an accurate statements of wages

listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

103. Upon information and belief, Defendant Legacy Landscaping, Inc. did not keep accurate records of hours worked by Plaintiff Erik Rios.

FIRST CAUSE OF ACTION
FLSA – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

104. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

106. The complete records concerning the number of hours worked by Plaintiffs and the FLSA Collective as well as the compensation Plaintiffs and the FLSA Collective received in workweeks in which excess hours were worked are in the exclusive possession and control of Defendants, and as such, Plaintiffs are unable to state at this time the exact amount due and owing to them.

107. Plaintiffs have expressed their consent to make these claims against Defendant Legacy Landscaping, Inc. by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit “A,” annexed hereto).

108. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and

the FLSA Collective have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid overtime compensation, together with interest and liquidated damages, in an amount to be determined at trial.

SECOND CAUSE OF ACTION
NYLL – Unpaid Overtime
(Brought on behalf of Plaintiffs)

109. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

110. Defendants employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least 1 and 1/2 times the regular hourly rate, in violation of the requirements of the NYLL.

111. By the course of conduct set forth above, Defendants violated N.Y. Lab. Law § 650, *et seq.*; 12 N.Y.C.R.R. § 142-2.2.

112. Defendants have a policy and practice of refusing to pay overtime compensation to Plaintiffs.

113. Defendants' failure to pay overtime compensation to Plaintiffs was willful within the meaning of N.Y. Lab. Law § 663.

114. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid overtime compensation and such other legal and equitable relief due to Defendants' unlawful and willful conduct, as the Court deems just and proper.

115. Plaintiffs seek recovery of liquidated damages, attorneys' fees, and costs to be paid by

the Defendants as provided by the NYLL.

THIRD CAUSE OF ACTION
FLSA – Failure to Pay Minimum Wage
(Brought on behalf of Plaintiffs and the members of the FLSA Collective)

116. Plaintiffs, on behalf of themselves and the FLSA Collective, reallege and incorporate by reference all allegations in all preceding paragraphs.

117. At all relevant times, Plaintiffs and the FLSA Collective were Defendants' employees within the meaning of 29 U.S.C. § 203(e)(1).

118. At all relevant times, Defendants were Plaintiffs and the FLSA Collective's employer within the meaning of 29 U.S.C. § 203(d).

119. At all relevant times, Plaintiffs, the FLSA Collective, and Defendants were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. § 206(a).

120. At all relevant times, the applicable federal minimum wage is codified by 29 U.S.C. § 206(a)(1).

121. Defendants willfully failed to pay Plaintiffs and the FLSA Collective at the minimum wages for the travel time they worked between their last assigned job each workday and Defendants' yard, in violation of FLSA, 29 U.S.C. § 206(a); 29 C.F.R. 785.38.

122. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the FLSA Collective have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid compensation, together with interest and liquidated damages, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
NYLL – Failure to Pay Minimum Wage
(Brought on behalf of Plaintiffs)

123. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

124. At all times relevant to this action, the state minimum wage was \$7.25 per hour on and after July 24, 2009; \$8.00 per hour on and after December 31, 2013; \$8.75 per hour on and after December 31, 2014; \$9.00 per hour on and after December 31, 2015; and \$10.00 per hour on and after December 31, 2016, as codified by N.Y. Lab. Law § 652(1); 12 N.Y.C.R.R. § 142-2.1.

125. Defendants' knew or should have known that they were required to pay Plaintiffs the minimum wage for all hours worked, including the portal to portal time worked.

126. Defendants willfully violated Plaintiffs' rights by failing to pay Plaintiffs any wages for their portal to portal time performed each workweek, in violation of N.Y. Lab. Law § 650 *et seq.*

127. Due to Defendants' NYLL violations, Plaintiffs are entitled to recover from Defendants their unpaid wages for the portal to portal time spent between Plaintiffs last assigned landscaping job each workday and when they left Defendants' yard, liquidated damages, reasonable attorneys' fees, and costs of this action pursuant to NYLL § 663(1).

FIFTH CAUSE OF ACTION
NYLL – Notice and Record-Keeping Requirement Violation
(Brought on behalf of Plaintiffs)

128. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs

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

130. Defendants failed to supply Plaintiffs with an accurate statement of wages as required by N.Y. Lab. Law § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

131. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage notice at the time of hiring from April 9, 2011 through February 26, 2015, Plaintiffs are each entitled to damages of \$50, or a total of \$2,500 per Plaintiff, as

provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

132. Due to Defendants' violations of N.Y. Lab. Law § 195, for each day that Defendants failed to provide a proper wage notice at the time of hiring from February 26, 2015 through the present, Plaintiffs are each entitled to damages of \$50, or a total of \$5,000 per Plaintiff, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

133. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage statement from April 9, 2011 through February 26, 2015, Plaintiffs are each entitled to damages of \$100, or a total of \$2,500 per Plaintiff, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

134. Due to Defendants' violations of N.Y. Lab. Law § 195, for each work day that Defendants failed to provide a proper wage statement from February 26, 2015 through the present, Plaintiffs are each entitled to damages of \$250, or a total of \$5,000 per Plaintiff, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, seek for the following relief:

A. That, at the earliest possible time, Plaintiff Jose A. Sorto be allowed to give notice to the FLSA Collective, or that the Court issue such notice, to all persons who are presently, or have at any time during the 3 years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendants as laborers, or similarly situated positions. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations from Defendants;

C. Unpaid overtime pay and liquidated damages permitted by law pursuant to the NYLL;

D. Unpaid minimum wage and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations from Defendants;

E. Unpaid minimum wage pursuant and liquidated damages permitted by law pursuant to NYLL and the supporting Minimum Wage Order;

F. Statutory damages for Defendants' violations of the notice and recordkeeping requirements pursuant to N.Y. Lab. Law § 195, reasonable attorneys' fees, costs and injunctive and declaratory relief as provided by N.Y. Lab. Law § 198;

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

H. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;

I. Attorneys' fees and costs of the action;

J. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;

K. An injunction requiring Defendants to cease the unlawful activity described herein pursuant to N.Y. Lab. Law § 190 *et seq.*;

L. Appropriate monetary relief for lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d);

M. Liquidated damages relating to lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d); and

N. Such other relief as this Court shall deem just and proper.

Dated: Melville, New York
September 25, 2017

Respectfully submitted,

By: /s/ Marijana Matura
Marijana Matura

SHULMAN KESSLER LLP

Troy L. Kessler

Marijana Matura

534 Broadhollow Road, Suite 275

Melville, New York 11747

Telephone: (631) 499-9100

*Attorneys for Plaintiffs and the
Putative FLSA Collective Class*

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JOSE A. SORTO, on behalf of himself and all others similarly situated, and JOSE A. SORTO RAMOS, HENRY ZELAYA, and ERIK RIOS, individually,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Shulman Kessler LLP; 534 Broadhollow Road, Suite 275, Melville, New York 11747; (631)499-9100

DEFENDANTS

LEGACY LANDSCAPING, INC. d/b/a LEGACY LANDSCAPING, and GREGG FOWLER,

County of Residence of First Listed Defendant Nassau
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<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	
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <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"/> 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"/> 424 Appeal 28 USC 159 <input type="checkbox"/> 425 Withdrawal 28 USC 157 <input type="checkbox"/> 426 Withdrawal 28 USC 157 <input type="checkbox"/> 427 Withdrawal 28 USC 157 <input type="checkbox"/> 428 Withdrawal 28 USC 157 <input type="checkbox"/> 429 Withdrawal 28 USC 157 <input type="checkbox"/> 430 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		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes	

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. Sec. 201

Brief description of cause:
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: 09/25/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ Marijana Matura

FOR OFFICE USE ONLY

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

Print

Save As...

Reset

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, Marijana Matura, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

Not applicable.

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

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

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

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

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

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

BAR ADMISSION

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

- Yes
- No

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

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Marijana Matura

EXHIBIT A

CONSENT FORM

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer Legacy Landscaping, Inc., to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Legacy Landscaping, Inc.
2. During the past three (3) years, there were occasions when I worked more than forty (40) hours in a week for Legacy Landscaping, Inc., and I did not receive proper overtime compensation for those hours.
3. I authorize Shulman Kessler LLP to represent me in this case.

Date: _____

Signature

Print Name

FORMULARIO DE CONSENTIMIENTO

1. Consiento para afirmar reclamaciones por violaciones del Acto de Estándares de Trabajo Justo, 29 Congreso de los Estados Unidos § 201, *et seq.*, contra mi empleador actual/anterior Legacy Landscaping, Inc., para asegurar cualquier ayuda que podrá concederse, incluyendo pago de horas extras, daños y perjuicios, honorarios de abogados, gastos y cualquier otra reparación que surja de mi empleo con Legacy Landscaping, Inc.
2. Durante los últimos tres (3) años, había ocasiones en que he trabajado más de cuarenta (40) horas a la semana para Legacy Landscaping, Inc. y no recibí compensación adecuada por aquellas horas.
3. Consiento a Shulman Kessler LLP para representarme en este pleito.

Fecha: 9/18/17

JOSE A. SORTO
Firma

JOSE A. SORTO
Nombre en Letra

CONSENT FORM

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Signature

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Fecha: 9/18/17

JOSE ASORTO RAMOS
Firma

JOSE ASORTO RAMOS
Nombre en Letra

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Signature

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Fecha: 9/18/17


Firma

Henry S. Zelaya
Nombre en Letra

CONSENT FORM

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Date: _____

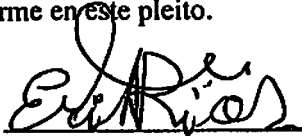
Signature

Print Name

FORMULARIO DE CONSENTIMIENTO

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Fecha: 9-18-17



Firma

Erik Rios
Nombre en Letra

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York [dropdown icon]

JOSE A. SORTO, on behalf of himself and all others
similarly situated, and JOSE A. SORTO RAMOS,
HENRY ZELAYA, and ERIK RIOS, individually,

Plaintiff(s)

v.

LEGACY LANDSCAPING, INC. d/b/a LEGACY
LANDSCAPING, and GREGG FOWLER,

Defendant(s)

Civil Action No. 17 Civ. 5599

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Legacy Landscaping, Inc. - 2341 Harrison Avenue, Baldwin, New York 11510
Gregg Fowler - 2341 Harrison Avenue, Baldwin, New York 11510

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:

Shulman Kessler LLP
534 Broadhollow Road, Suite 275
Melville, New York 11747

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Legacy Landscaping Clipped with Lawsuit: Employees Seek Unpaid Wages](#)
