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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY – NEWARK DIVISION

JEFFREY A. STUBITS, individually and on behalf of all other
persons similarly situated who were employed by DENVILLE
LINE PAINTING, INC.,

Plaintiff,

- against -

DENVILLE LINE PAINTING, INC.,

Defendant.

CIVIL ACTION
FILE NO: 18-cv-649

**CLASS ACTION
COMPLAINT**

Named Plaintiff Jeffrey A. Stubits (“Named Plaintiff”), by his attorneys, Virginia & Ambinder, LLP and Faruqi & Faruqi, LLP, alleges upon knowledge to himself and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought on behalf of Named Plaintiff and a putative class of individuals (collectively “Plaintiffs”) who, as employees of Denville Line Painting, Inc. (“Denville”), seek to recover wages and benefits for work performed on publicly funded paving projects in New York and New Jersey (collectively referred to as the “Projects”).

2. Plaintiffs allege that between January 2012 and the present they performed pavement marking work in New York and New Jersey such as installation or application of paint,

epoxy, thermoplastic, polyurea, installation of tape, pavement reflectors, lens replacement and similar tasks, and that Denville failed to pay contractually and/or statutorily required prevailing wages and supplemental benefits.

JURISDICTION

3. This Court has original jurisdiction over this action pursuant to the diversity jurisdiction, 28 U.S.C. § 1332. The parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.00.

VENUE

4. Venue is appropriate in this Court under 28 U.S.C. § 1391(b)(2), as a substantial part of the events that give rise to this action took place in the District of New Jersey, Newark.

PARTIES

5. Named Plaintiff Stubits resides in New York.

6. Defendant DENVILLE LINE PAINTING, INC. is incorporated in the state of New Jersey. Upon information and belief, DENVILLE LINE PAINTING, INC. maintains its principal place of business at 2 Green Pond Road, Rockaway, New Jersey 07866.

CLASS ALLEGATIONS

7. This action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. This action is brought on behalf of the Named Plaintiff and a class consisting of every other person who performed paving, painting and construction-related work on Projects in New York and New Jersey between January 2012 and the present.

9. Named Plaintiff and members of the putative class are victims of Denville's common policy and/or plan to not pay prevailing wages and supplemental benefits for all work

performed by Named Plaintiff and members of the putative class on the Projects.

10. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 40 individuals. In addition, the names of all potential members of the putative class are not known.

11. Questions of law and fact common to the putative class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to: (1) whether Denville entered into contracts that required the payment of prevailing wages and supplemental benefits to Named Plaintiff and members of the putative class; (2) whether Denville had a statutory and/or contractual requirement to pay prevailing wages and supplemental benefits for the work performed on Projects; and (3) whether Denville paid the Named Plaintiff and members of the putative class at the proper prevailing wage and benefit rate for all hours worked and under the correct trade designation.

12. The claims of the Named Plaintiff are typical of the claims of the putative class members. The Named Plaintiff, like all members of the putative class, worked on the Projects and was subject to Defendant's policies and willful practice of refusing to pay employees prevailing wages and supplemental benefits. The Named Plaintiff and putative class members have thus sustained similar injuries as a result of the Defendant's actions

13. Named Plaintiff and his counsel will fairly and adequately protect the interests of the putative class. Named Plaintiff has retained counsel experienced in complex wage and hour class action litigation, and in particular litigation relating to unpaid prevailing wages and supplemental benefits.

14. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Named Plaintiff and putative class action members lack the

financial resources to adequately prosecute separate lawsuits against Defendant. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendant's policies.

FACTS

15. Upon information and believe, since at least January 2012, Denville has been a party to various contracts with prime contractors or with various state, county and municipal entities to perform installation or application of paint, epoxy, thermoplastic, polyurea, installation of tape, pavement reflectors, lens replacement and similar tasks at the sites of the Projects (the "Contracts").

16. Upon information and belief, the Contracts that govern the Projects located in New York and New Jersey each contain a provision that requires Denville to pay workers employed on the Projects an hourly rate of prevailing wages and supplemental benefits set by the Comptroller of the City of New York, the New York State Department of Labor, the U.S. Department of Labor or the New Jersey Department of Labor depending on the worker's trade designation and the location of the Project.

17. Upon information and belief, a schedule of the prevailing rates of wages and supplemental benefits were annexed to, or incorporated by reference, in each of the Contracts governing the Projects.

18. This promise to pay and ensure payment of the prevailing wage and supplemental benefit rates in the Contracts was made for the benefit of all workers furnishing labor on the Projects and, as such, the workers furnishing labor on the sites of the Projects are the beneficiaries of that promise.

19. In addition, pursuant to New Jersey Statute §§ 34:11-56.27; 34:11-56.28, each of

the Contracts governing work on the New Jersey Projects contain a provision specifying the prevailing wage and benefit rate to be paid to all Plaintiffs employed on the New Jersey Projects.

20. The “prevailing rate of wage” and “supplemental benefit” is the rate of wage and benefit paid in the locality by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector. *See* New Jersey Statute §§ 34:11-56.27; 34:11-56.28.

21. Upon information and belief, a schedule of prevailing rates of wages and supplemental benefits to be paid to all workers furnishing labor on each of the New Jersey Projects was annexed to and formed a part of the New Jersey Contracts.

22. Upon information and belief, the New Jersey Contracts further required Denville to oversee the performance of the work, and to ensure that workers employed at the New Jersey Projects were paid prevailing wage and supplemental benefits.

23. New York State Labor Law § 220 provides that the wages to be paid to laborers, workmen and mechanics upon public work shall not be less than the “prevailing rate of wages.”

24. The “prevailing rate of wage” is the rate of wage paid in the locality by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sectors. *See* New York Labor Law § 220.

25. New York Labor Law § 220 also requires that the laborers, workmen and mechanics upon such public work be provided “supplemental benefits” at the prevailing rate. “Supplemental benefits” are all forms of remuneration for employment paid in any medium other than cash, including but not limited to health, welfare and non-occupational disability insurance, retirement and vacation benefits, holiday pay and life insurance. The prevailing rate of supplemental benefits is determined in the same manner as wages. *See* New York Labor Law §

220.

26. Upon information and belief, under the Contracts, the prevailing wage and supplemental benefit rate for non-overtime or premium hours worked was in excess of \$50 to \$80 per hour depending on the type of work performed, the location of the work performed, and the year it was performed.

27. The Named Plaintiff and members of the putative class performed various types of construction work at the sites of the Projects for Denville.

28. Named Plaintiff Stubits was employed by Denville between June 2011 and November 2016.

29. Named Plaintiff Stubits worked on various New York and New Jersey projects.

30. During his employment, Named Plaintiff regularly worked no less than eight hours per day on the Projects.

31. Named Plaintiff was not paid the correct wage and/or supplemental benefit rate for all hours worked on the Projects

32. Additionally, when Named Plaintiff worked overtime on the Projects, he was not paid the correct wage and/or supplemental benefit rate for all hours worked, including time worked in excess of eight hours per day or forty hours per week (overtime) and/or work performed on weekends, evenings, and holiday (premium wages).

**FIRST CAUSE OF ACTION
AGAINST DEFENDANT DENVILLE --
BREACH OF THE CONTRACTS**

33. Named Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs.

34. Upon information and belief, the New York and New Jersey Contracts entered into

by Defendant Denville with government entities or with prime contractors, contained a requirement to pay Named Plaintiff and the putative class at the prevailing rates of wages and supplemental benefits for the work they performed.

35. Those prevailing rates of wages and supplemental benefits were made a part of the Contracts for the benefit of Named Plaintiff and the other members of the putative class.

36. Defendant Denville breached the Contracts by willfully failing to pay and ensure payment to Named Plaintiff and the other members of the putative class the prevailing rates of wages and supplemental benefits at the proper trade classification rates for all labor performed upon the Projects.

37. By reason of its breach of each Contract, Defendant Denville is liable to Named Plaintiff and the other members of the putative class in the amount to be determined at the trial, plus interest, costs and attorneys' fees.

**SECOND CAUSE OF ACTION
AGAINST DENVILLE FOR
FAILURE TO PAY THE NEW JERSEY PREVAILING WAGE**

38. Named Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs.

39. New Jersey Statute 34:11-56.40 concerning Wages on Public Work provides that "if any workman is paid less than the prevailing wage to which such workman is entitled under the provisions of this act such workman may recover in a civil action the full amount of such prevailing wage less any amount actually paid to him or her by the employer, together with costs and such reasonable attorney's fees."

40. Defendant willfully paid Named Plaintiff and the other members of the putative class less than the prevailing rates of wages and supplemental benefits to which Named Plaintiff

and the other members of the putative class were entitled for the labor which they furnished to Denville on Projects located in New Jersey.

41. Due to its failure to pay prevailing wages and supplemental benefits, Defendant Denville is liable to Named Plaintiff and the other members of the putative class in the amount to be determined at the trial, plus interest, costs and attorneys' fees.

WHEREFORE, Named Plaintiff and the members of the putative class demand judgment:

- (1) on their first cause of action against Defendant Denville in an amount to be determined at trial, plus interest, costs and attorneys' fees;
- (2) on their second cause of action against Defendant Denville in an amount to be determined at trial, plus interest, costs and attorneys' fees;
- (3) such other and further relief as to the Court may deem just and proper.

Dated: New York, New York
January 5, 2018

VIRGINIA & AMBINDER, LLP

/s/ LLOYD AMBINDER
Virginia & Ambinder, LLP
Lloyd Ambinder, Esq.
40 Broad Street -- 7th Floor
New York, N.Y. 10004
212-943-9080

and

Innessa Melamed Huot, Esq.
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685 Third Avenue -- 26th Floor
New York, NY 10017
212-983-9330

Attorneys for Plaintiff and the Putative 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

JEFFREY A. STUBITS, individually and on behalf of all other persons similarly situated who were employed by DENVILLE LINE PAINTING, INC.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Virginia & Ambinder, LLP 40 Broad Street -- 7th Floor, New York, N.Y. 10004 212-943-9080

DEFENDANTS

DENVILLE LINE PAINTING, INC.

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

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

Attorneys (If Known) Unknown

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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):

New York State Labor Law § 220

Brief description of cause:

to recover wages and benefits for work performed on publicly funded paving projects in NY and NJ

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 SIGNATURE OF ATTORNEY OF RECORD

01/16/2018 s/ Lloyd Ambinder

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

JEFFREY A. STUBITS, et al.

Plaintiff

v.

DENVILLE LINE PAINTING, INC.

Defendant

Civil Action No. 18-cv-649

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Denville Line Painting, Inc - 2 Green Pond Road, Rockaway, New Jersey 07866

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:

Lloyd Ambinder, Esq.
Virginia & Ambinder, LLP
40 Broad Street, 7th Floor
New York, New York 10004
Tel: (212) 943-9080

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 18-cv-649

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:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Denville Line Painting Crosses the Line with Illegal Pay Practices](#)
