

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRANDI BRODZENSKI)	CASE NO.
<i>on behalf of herself and all others</i>)	
<i>similarly situated,</i>)	JUDGE
)	
Plaintiff,)	MAGISTRATE JUDGE
)	
v.)	
)	
STONEMOR PARTNERS LP)	
)	
-and-)	
)	
STONEMOR OPERATING, LLC)	
)	
-and-)	
)	
STONEMOR GP LLC,)	
)	
Defendants.)	

**PLAINTIFF’S COLLECTIVE ACTION COMPLAINT
(With Jury Demand)**

Now comes Brandi Brodzenski (“Plaintiff”), by and through counsel, and for her Complaint against StoneMor Partners LP, StoneMor Operating LLC, and StoneMor GP LLC (collectively “Defendants”), states and alleges the following:

INTRODUCTION

1. This “collective action” challenges Defendants’ practices and policies of failing to pay Plaintiff and other similarly-situated employees regular and overtime wages earned by them and owed to them in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219.

JURISDICTION AND VENUE

2. The Court has jurisdiction over Plaintiff's FLSA claims and this collective action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants conduct business throughout this District and Division and because a substantial part of the events and omissions giving rise to the claims occurred in this District and Division.

PARTIES

4. Plaintiff Brandi Brodzenski was employed by Defendants as "family counselor" and/or a "family advisor."

5. At all times relevant herein, Plaintiff was a citizen of Ohio.

6. At all times relevant herein, Plaintiff was an employee within the meaning of 29 U.S.C. § 203(e).

7. At all times relevant herein, Plaintiff and all similarly-situated employees were employees engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 206-207.

8. Defendant StoneMor Partners, LP was and is a limited partnership formed under the laws of the State of Delaware with its principal place of business in Pennsylvania.

9. Defendant StoneMor GP, LLC is a limited liability company formed under the laws of the state of Delaware with its principal place of business in Pennsylvania.

10. Defendant StoneMor Operating, LLC is a limited liability company formed under the laws of the State of Delaware with its principal place of business located in Pennsylvania.

11. Defendants own and operate cemeteries in Ohio and across the country, and sell cemetery products including but not limited to: burial lots, lawn and mausoleum crypts, burial

vaults, urns, caskets, memorials, and services to provide for the installation of the cemetery merchandise.

12. At all times relevant herein, Defendants conducted business activities throughout Ohio as well as twenty-seven other states and Puerto Rico.

13. At all times relevant herein, Defendants were employers within the meaning of 29 U.S.C. § 203(d).

14. At all times relevant herein, Defendants were enterprises within the meaning of 29 U.S.C. § 203(r).

15. At all times relevant herein, Defendants were enterprises engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1).

16. Written consents to join this action as to Count I, as and when executed by other individual plaintiffs, will be filed pursuant to 29 U.S.C. § 216(b).

FACTUAL ALLEGATIONS

17. Plaintiff and other similarly-situated employees earned commissions for performing certain job duties, including but not limited to selling Defendants' products and services.

Commission Weeks

18. In some weeks, Defendants paid Plaintiff and similarly-situated employees only their earned commissions for that workweek, and no hourly wage.

19. For weeks in which Defendants paid Plaintiff and other similarly-situated employees only their earned commissions, Defendants did not pay Plaintiff and other similarly-situated employees overtime at a rate of one and one-half times their respective regular rates for all hours worked over forty in that workweek.

20. For weeks in which Defendants paid Plaintiff and other similarly-situated employees only their earned commissions, Defendants failed to include Plaintiff's and other similarly-situated employees' earned commissions in calculating their regular rates for overtime purposes as required by 29 C.F.R. § 778.117 *et seq.*

Non-Commission Weeks

21. In other weeks, Defendants paid Plaintiff and similarly-situated employees only and hourly wage and failed to pay Plaintiff and other similarly-situated employees their earned commissions for that workweek.

22. For weeks in which Defendants paid Plaintiff and other similarly-situated employees only an hourly wage, Defendants failed to pay Plaintiff and similarly-situated employees their respective regular rate and/or minimum wage for all hours worked up to forty in a workweek.

23. For weeks in which Defendants paid Plaintiff and other similarly-situated employees only an hourly wage, Defendants failed to pay Plaintiff and similarly-situated employees overtime for hours worked over forty per workweek.

24. For weeks in which Defendants paid Plaintiff and other similarly-situated employees only an hourly wage, Defendants failed to include Plaintiff's and other similarly-situated employees' earned commissions in calculating their regular rates for overtime purposes as required by 29 C.F.R. § 778.117 *et seq.*

Failure to Keep Accurate Records

25. Defendants failed to make, keep, and preserve records of all hours worked by Plaintiff and other similarly-situated employees.

26. As a result of Defendants' record-keeping practices, much of the work performed

by Plaintiff and other similarly-situated employees is unrecorded in Defendant's time and earnings records.

COLLECTIVE ACTION ALLEGATIONS

27. Plaintiff brings Count I of this action on her own behalf pursuant to 29 U.S.C. § 216(b), and on behalf of all other persons similarly-situated who have been, are being, or will be adversely affected by Defendants' unlawful conduct.

28. The class which Plaintiff seeks to represent and for whom Plaintiff seeks the right to send "opt-in" notices for purposes of the collective action, and of which Plaintiff is herself a member, is composed of and defined as follows:

All former and current family counselors and/or family advisors employed by StoneMor Partners LP, StoneMor Operating LLC, or StoneMor GP LLC between November 14, 2011 and the present.

29. Plaintiff is unable to state at this time the exact size of the potential class, but upon information and belief, avers that it consists of at least 750 persons.

30. This action is maintainable as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) as to claims for unpaid regular and overtime compensation, liquidated damages, and attorneys' fees and costs under the FLSA. In addition to Plaintiff, numerous current and former employees are similarly-situated with regard to their wages and claims for unpaid wages and damages. Plaintiff is representative of those other employees and is acting on behalf of their interests as well as her own interests in bringing this action.

31. These similarly-situated employees are known to Defendants and are readily identifiable through Defendants' payroll records. These individuals may readily be notified of this action, and allowed to opt in pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for unpaid overtime compensation, liquidated damages, and attorneys'

fees and costs under the FLSA.

COUNT ONE
(Fair Labor Standards Act Violations)

32. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

33. Defendant's practice and policy of not paying Plaintiff and other similarly-situated employees' at least the minimum wage for all hours worked up to 40 hours in a workweek violated the FLSA, 29 U.S.C. §§ 201-219.

34. Defendant's practice and policy of not paying Plaintiff and other similarly-situated employees' wages at their regular rates of pay for all hours worked up to 40 hours in a workweek violated the FLSA, 29 U.S.C. §§ 201-219.

35. Defendant's practice and policy of not paying Plaintiff and other similarly-situated employees overtime compensation at a rate of one and one-half times their regular rates of pay for the hours they work in excess of 40 hours in a workweek violated the FLSA, 29 U.S.C. §§ 201-219.

36. Defendants failure to include Plaintiff's and other similarly-situated employees' earned commissions in calculating their regular rates for overtime purposes violated the FLSA, 29 U.S.C. §§ 201-219.

37. Defendant's failure to keep records of all of the hours worked each workday and the total hours worked each workweek by Plaintiff and other similarly-situated employees violated the FLSA, 29 C.F.R. § 516.2(a)(7).

38. By engaging in the above-mentioned activities, Defendant willfully, knowingly, and/or recklessly violated the provisions of the FLSA.

39. As a result of Defendant's practices and policies, Plaintiff and other similarly-

situated employees have been damaged in that they have not received wages due to them pursuant to the FLSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all those similarly situated collectively pray that this Honorable Court:

- A. Issue an order permitting this litigation to proceed as a collective action;
- B. Order prompt notice, pursuant to 29 U.S.C. § 216(b), to all class members that this litigation is pending and that they have the right to “opt in” to this litigation;
- C. Award Plaintiff and the class she represents actual damages for unpaid regular wage and overtime compensation;
- D. Award Plaintiff and the class she represents liquidated damages in an amount equal to the unpaid regular wage and overtime compensation found due to Plaintiff and the class;
- E. Award Plaintiff and the class she represents pre- and post-judgment interest at the statutory rate;
- F. Award Plaintiff and the class she represents attorneys’ fees, costs, and disbursements; and
- G. Award Plaintiff and the class she represents further and additional relief as this Court deems just and proper.

Respectfully submitted,

COHEN ROSENTHAL & KRAMER LLP

/s/ Jason R. Bristol
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Counsel for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all eligible claims and issues.

/s/ Jason R. Bristol
One of the Attorneys for Plaintiff

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

Brandi Brodzenski

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Jason R. Bristol, James B. Rosenthal, Joshua B. Fuchs 700 W. St.Clair Ave. Ste. 400, Cleveland, OH 44113 216-781-7956

DEFENDANTS

StoneMor Partners LP StoneMor Operating LLC StoneMor GP LLC

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)

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: 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, TORTS, CIVIL RIGHTS, 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, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 USC § 201 et seq. Brief description of cause: Failure to pay regular and 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 11/14/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Jason R. Bristol

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is **RELATED** to another **PENDING** civil case. This action is **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: Cuyahoga

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.