

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

SUNNY HENRY and KENNETH MORALES,
individually and on behalf of all other persons
similarly situated who were formerly or are presently
employed by JOHN TENORIO, individually, and
HBS SERVICES, LLC and/or any other affiliated
entities

Docket No: 17-cv-94

Plaintiffs,

**CLASS AND COLLECTIVE ACTION
COMPLAINT**

- against -

JOHN TENORIO, individually, and HBS
SERVICES, LLC and/or any other affiliated entities,

Jury Trial Demanded

Defendants.

Named Plaintiffs by their attorneys, Virginia and Ambinder, LLP, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (“FLSA”) 29 U.S.C. §§ 207 and 216(b), New York Labor Law (“NYLL”) §§ 663, 195, 198, and 12 New York Codes, Rules, and Regulations (“NYCRR”) § 142-2.2 to recover unpaid overtime compensation owed to SUNNY HENRY (“Henry”), KENNETH MORALES (“Morales”) (collectively “Named Plaintiffs”), and all similarly situated persons who were formerly or are presently employed by JOHN TENORIO (“Tenorio”), individually, and HBS SERVICES, LLC and/or any other affiliated entities (“HBS”) (collectively “Defendants”).

2. At all times relevant to this litigation, Defendants have engaged in a policy and practice of requiring Named Plaintiffs and members of the putative class and collective to regularly work over forty (40) hours in a week without paying them overtime wages at a rate of one and one-half times their regular hourly wage.

3. At all times relevant to this litigation, Defendants have engaged in a policy and practice of failing to provide Named Plaintiffs and members of the putative class and collective statutorily required wage notices and wage statements pursuant to New York Labor Law §§ 195 and 198.

4. Named Plaintiffs have initiated this action on their own behalf, and on behalf of all similarly situated employees, seeking overtime compensation that Named Plaintiffs and all similarly situated employees were deprived of, plus interest, damages, attorneys' fees, and costs, and statutory damages.

JURISDICTION

5. Jurisdiction of this Court is invoked pursuant to the FLSA, 29 U.S.C. §§ 207 and 216(b) and 28 U.S.C. §§ 1331 and 1337. This Court also has supplemental jurisdiction over all New York State Law claims pursuant to 28 U.S.C. § 1367.

6. The statute of limitations under the FLSA for willful violations is three (3) years. *See* 29 U.S.C. § 255(a).

7. The statute of limitations under the NYLL is six (6) years. *See* New York Labor Law § 198(3).

VENUE

8. Venue for this action in the Eastern District of New York is appropriate under 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

THE PARTIES

9. Named Plaintiff Sunny Henry resides in Brooklyn, New York and was employed by Defendants from approximately May 2015 to November 2016 performing services for

Defendants' events company, including, but not limited to, stagehand work, production, driving, maintenance services, and setting up and taking down equipment for events.

10. Named Plaintiff Kenneth Morales resides in Brooklyn, New York and was employed by Defendants from approximately 2014 to December 2016 performing services for Defendants' events company, including, but not limited to, stagehand work, production services, driving, maintenance services, and setting up and taking down equipment for events.

11. Defendant HBS SERVICES, LLC, is a domestic corporation incorporated under the laws of the State of Florida with its principal place of business at 314 Carol Drive, NE, Palm Bay, Florida 32907.

12. Defendant JOHN TENORIO is a resident of 6125 156th Street, Flushing, New York 11367 and at all relevant times is, or was, a founder, officer, director, president, principle, vice president, and/or owner of Defendant HBS.

CLASS AND COLLECTIVE ACTION ALLEGATIONS

13. This action is properly maintainable as a collective action pursuant to the FLSA 29 U.S.C. § 216(b) and as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.

14. This action is brought on behalf of Named Plaintiffs and a class consisting of similarly situated employees who worked for Defendants performing work relating to setting up and taking down stages and platforms.

15. Named Plaintiffs and members of the putative class and collective are all victims of Defendants' common policy and/or plan to violate the FLSA by failing to provide overtime wages, at the rate of one and one half times the regular rate of pay, for all time worked in excess of forty (40) hours in any given week, pursuant to 29 U.S.C. § 207.

16. Named Plaintiffs and members of the putative class and collective are all victims of the Defendants' common policy and/or plan to violate the NYLL by failing to provide wage notices and wage statements, pursuant to NYLL §§ 195-1 and 195-3.

17. 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 forty (40) employees.

18. The 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 Defendants failed to pay overtime wages, at the rate of one and one half times the regular rate of pay, for all hours worked in excess of forty (40) hours in any given week and (2) whether Defendants failed to provide wage notices and wage statements.

19. The claims of Named Plaintiffs are typical of the claims of the putative class members. Named Plaintiffs, like all members of the putative class, were subject to Defendants' policies and willful practice of refusing to pay employees overtime compensation and failing to provide wage notices and wage statements. Named Plaintiffs and putative class members have thus sustained similar injuries as a result of Defendants' actions.

20. Named Plaintiffs and their counsel will fairly and adequately protect the interests of the putative class. Named Plaintiffs have retained counsel experienced in complex wage and hour class and collective action litigation.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Named Plaintiffs and putative class action members lack the financial resources to adequately prosecute separate lawsuits against Defendants. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to Defendants' policies.

FACTS

22. Named Plaintiffs were employed by Defendants to set up and take down stages and platforms for various events.

23. During his employment, Named Plaintiff Henry typically worked approximately eleven (11) to fourteen (14) hours per day, approximately five (5) days per week.

24. Named Plaintiff Henry was paid a flat daily rate of approximately \$50 to \$100, regardless of the amount of hours worked.

25. During his employment, Named Plaintiff Morales typically worked approximately eleven (11) to fourteen (14) hours per day, approximately five (5) days per week.

26. Named Plaintiff Morales was paid a flat daily rate of approximately \$50 to \$100, regardless of the amount of hours worked.

27. Despite regularly working far in excess of 40 hours in a week, Named Plaintiffs did not receive overtime compensation at the rate of one-and-one-half times their regular rates of pay.

28. Defendants did not provide Named Plaintiffs with any notifications whatsoever indicating their regular or overtime rate of pay at the time of hiring or at any subsequent point during their employment.

29. During Named Plaintiffs' employment with Defendants, Named Plaintiffs were not provided with any wage statements that reflected the hours they worked, the amount they were being paid, or their regular or overtime rates of pay.

30. Like Named Plaintiffs, Named Plaintiffs' co-workers were also paid a flat daily rate of pay of approximately \$50 to \$100 per day regardless of the number of hours they worked.

31. Like Named Plaintiffs, Named Plaintiffs' co-workers also regularly worked over 40 hours in a week.

32. Defendants maintain a policy and practice of not compensating their employees at one-and-one-half times their regular hourly wage whenever they work more than forty (40) hours in a given week.

33. Defendants maintain a policy and practice of not providing its employees with wage notifications at the time of hire indicating each employee's regular rate of pay and overtime rate of pay.

34. Defendants maintain a policy and practice of not providing its employees the statutorily required wage statements indicating each employee's regular rate of pay, overtime rate of pay, or hours worked during a particular pay period.

35. Defendant Tenorio is an owner and director of Defendant HBS and (i) had the power to hire and fire employees; (ii) supervised and controlled employee work schedules or conditions of employment; (iii) determined the rate and method of payment for employees; and (iv) maintained employment records.

36. Defendant Tenorio dominated the day-to-day operating decisions of Defendant HBS, made major personnel decisions for Defendant HBS, and had complete control of the alleged activities of Defendant HBS which give rise to the claims brought herein.

37. Defendant Tenorio was a supervisor, officer and/or agent of Defendant HBS who acted directly or indirectly in the interest of Defendant HBS, and is an "employer" within the meaning of the FLSA and the NYLL.

38. Defendant Tenorio had substantial control of Plaintiffs' working conditions and over the unlawful policies and practices alleged herein.

39. Named Plaintiffs and members of the putative class performed labor for the benefit of and at the direction of Defendant Tenorio and Defendant HBS.

40. Upon information and belief, at all relevant times, Defendants had the power to determine employee policies, including but not limited to policies governing the payment of wages and overtime compensation to employees.

41. Upon information and belief, Defendant HBS' annual gross volume of sales made or business done is not less than \$500,000.

42. Upon information and belief, Defendants are engaged in interstate commerce, including handling and working with goods or materials that have been moved in or produced for interstate commerce.

FIRST CAUSE OF ACTION
FLSA OVERTIME WAGES

43. Named Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs.

44. Pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

45. Pursuant to 29 U.S.C. § 203(d), an "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

46. Defendants are employers within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d).

47. Named Plaintiffs and other members of the putative collective are employees, within the meaning contemplated in in the FLSA, 29 U.S.C. §203(e).

48. Defendants failed to pay Named Plaintiffs and, upon information and belief, other members of the putative collective overtime wages earned for the time they worked for Defendants after the first forty (40) hours in any given week.

49. Upon information and belief, Defendants' failure to pay Named Plaintiffs and members of the putative collective their rightfully owed wages was willful.

50. By the foregoing reasons, Defendants are liable to Named Plaintiffs and members of the putative collective in an amount to be determined at trial, plus liquidated damages, interest, attorneys' fees and costs.

SECOND CAUSE OF ACTION
NEW YORK OVERTIME COMPENSATION LAW

51. Named Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs.

52. 12 NYCRR § 142-2.2 requires that “[a]n employer shall pay an employee for overtime at a wage rate of 1 ½ times the employee’s regular rate” for hours worked in excess of 40 hours in one workweek.

53. New York Labor Law § 663, provides that “[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney’s fees.”

54. Defendants are employers, within the meaning contemplated, pursuant to New York Labor Law Article 19 § 651(6) and the supporting New York State Department of Labor Regulations.

55. Named Plaintiffs and members of the putative class are employees, within the meaning contemplated, pursuant to New York Labor Law Article 19 § 651(5) and the supporting New York State Department of Labor Regulations.

56. Named Plaintiffs and members of the putative class worked more than forty (40) hours a week while working for Defendants.

57. Named Plaintiffs and members of the putative class did not receive overtime compensation for hours worked after the first forty (40) hours in a week.

58. Upon information and belief, Defendants' failure to pay overtime compensation for work performed by Named Plaintiffs and members of the putative class after the first forty hours worked in a week was willful.

59. By the foregoing reasons, Defendants have violated New York Labor Law § 663 and 12 NYCRR § 142-2.2, and are liable to Named Plaintiffs and members of the putative class in an amount to be determined at trial, plus liquidated damages, interest, attorneys' fees, and costs.

THIRD CAUSE OF ACTION
NEW YORK § 195(1) WAGE NOTICE VIOLATION

60. Named Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs.

61. Pursuant to Section 195(1) of the NYLL, an employer is required to provide its employees at the time of hiring a notice containing information, such as, "the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other;

. . . the regular pay day designated by the employer . . . ; [and] the name of the employer For all employees who are not exempt from overtime compensation . . . , the notice must state the regular hourly rate and overtime rate of pay.”

62. Pursuant to Section 198-1(b) of the NYLL, an employee that does not receive a wage notification, as required by NYLL § 195(1), may bring a civil action to recover damages of \$250 for each work day that the violation occurs or continues to occur, but not to exceed \$5,000.

63. At the time of hire, Defendants did not provide Named Plaintiffs or members of the putative class with wage notifications informing them of, among other things, (1) their regular rates of pay, (2) their overtime rates of pay, (3) the basis of their rates of pay (e.g., whether they were hourly employees), or (4) the regular pay day designated by Defendants.

64. Defendants violated NYLL § 195(1) by failing to provide Named Plaintiffs and members of the putative class with wage notifications containing the information required by NYLL § 195, *et seq.*

65. The failure of Defendants to provide Named Plaintiffs and members of the putative class with wage notifications in violation of NYLL § 195 was willful.

66. By the foregoing reasons, Defendants are liable to Named Plaintiffs and members of the putative class the statutory amounts, plus attorney’s fees, costs, and any other damages permitted under the NYLL.

FOURTH CAUSE OF ACTION
NEW YORK § 195(3) WAGE STATEMENT VIOLATION

67. Named Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs.

68. Pursuant to Section 195(3) of the New York Labor Law, an employer is required to furnish each employee with a statement with every payment of wages that identifies, among

other things, whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or in another manner. For employees that are not exempt from overtime compensation under New York state law or regulation, such wage statement must also include “the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.”

69. Pursuant to Section 198-1(d) of the New York Labor Law, an employee that does not receive a wage statement, as required by NYLL § 195(3), may bring a civil action to recover damages of \$50 for each work day that the violation occurs or continues to occur, but not to exceed \$5,000.

70. Named Plaintiffs and members of the putative class did not receive any wage statements from the Defendants.

71. Defendants violated NYLL § 195(3) by failing to provide Named Plaintiffs and members of the putative class with wage statements containing the information required by NYLL § 195(3).

72. The failure of Defendants to provide Named Plaintiffs and members of the putative class with wage statements in violation of NYLL § 195 was willful.

73. By the foregoing reasons, Defendants are liable to Named Plaintiffs and members of the putative class and collective the statutory amounts, plus attorney’s fees, costs, and any other damages permitted under the NYLL.

WHEREFORE, Named Plaintiffs and putative class members demand judgment:

1. on their first cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages, interest, attorneys’ fees and costs;

2. on their second cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages, interest, attorneys' fees and costs;

3. on their third cause of action against Defendants, for all statutory damages permitted under the NYLL plus attorneys' fees and costs;

4. on their fourth cause of action, against Defendants, for all statutory damages permitted under the NYLL plus attorneys' fees and costs; and

5. any other and further relief the Court may deem just and proper.

Dated: New York, New York

January 6, 2017

VIRGINIA & AMBINDER, LLP

By: s/Lloyd Ambinder, Esq.

Lloyd Ambinder, Esq.

Jack Newhouse, Esq.

Virginia & Ambinder, LLP

40 Broad Street, 7th Floor

New York, New York 10004

(212) 943-9080

*Attorneys for Named Plaintiffs and the
putative class and collective*

JS 44 (Rev. 07/16)

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 cover sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

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| <p>I. (a) PLAINTIFFS SUNNY HENRY and KENNETH MORALES, individually and on behalf of all other persons similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Virginia & Ambinder, LLP, 40 Broad Street, 7th Floor New York, New York 10004, (212) 943-9080</p> | <p>DEFENDANTS HBS SERVICES, LLC and JOHN TENORIO, individually, and/or any other affiliated entities</p> <p>County of Residence of First Listed Defendant <u>Queens</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> |
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| <p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 40%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> | | 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 |
| | 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)

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| <p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> | <p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> | <p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> | <p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 851 HIA (1395ff)</p> <p><input type="checkbox"/> 852 Black Lung (923)</p> <p><input type="checkbox"/> 853 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 854 SSID Title XVI</p> <p><input type="checkbox"/> 855 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p> | <p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> |
|---|---|--|---|---|

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Fair Labor Standards Act ("FLSA") 29 U.S.C. §§ 207 and 216(b)

Brief description of cause:
 To recover unpaid overtime compensation owed to Plaintiffs and all similarly situated persons.

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 1/6/17 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Lloyd R. Ambinder, counsel for Plaintiffs - Do Not Certify, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

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

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

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

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

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

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

SUNNY HENRY and KENNETH MORALES, et al.

Plaintiff

v.

HBS SERVICES, LLC and JOHN TENORIO, individually, and/or any other affiliated entities

Defendant

Civil Action No. 17-cv-94

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JOHN TENORIO - 6125 156th Street, Flushing, New York 11367

HBS SERVICES, LLC - 314 Carol Drive, NE, Palm Bay, Florida 32907

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.
Jack Newhouse, Esq.
40 Broad Street, 7th Floor
New York, NY 10004

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. 17-cv-94

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

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