

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ **AUG 27 2018** ★
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SANTOS HERNANDEZ, FERDIS DELGADO, and
MANUEL CAMPOS
*On behalf of themselves and
others similarly situated*

Plaintiffs,

-against-

COMPLAINT

**PLAINTIFFS DEMAND
A TRIAL BY JURY**

CV-18 4862

QUALITY BLACKTOP SERVICES, INC.,
STEVEN HELLERMAN DRIVEWAY CORP.,
JOHN DOE PRIME CONTRACTORS 1 THROUGH 10, and
JOHN DOE SURETY COMPANY 1 THROUGH 10
KARLINE HELLERMAN AND STEVEN HELLERMAN
in their individual capacity

**BIANCO, J.
LINDSAY, M.J.**

Defendants.

-----X

Plaintiffs, SANTOS HERNANDEZ, FERDIS DELGAGO, AND MANUEL
CAMPOS by and through their attorney, DELVIS MELÉNDEZ,
complaining of the Defendants QUALITY BLACKTOP SERVICES, INC.,
KARLINE HELLERMAN, and STEVEN HELLERMAN collectively,
respectfully alleges as follows:

NATURE OF THE CLAIM

This action is brought to recover from the Defendants unpaid
overtime compensation, as well as an additional equal amount in
liquidated damages, costs and reasonable counsel fees under the

provisions of Title 29 U.S.C.A. 201 et seq., and specifically under the provisions of Title 29 U.S.C.A. 216(b).

JURISDICTION

This Court has jurisdiction over the claims presented on the First Claim for Relief herein pursuant to the Act of June 25, 1938, ch 676, 52 Stat 1069, 29 U.S.C. Sections 201-219, known as the Fair Labor Standards Act ("the FLSA" or "the Act"), a law of the United States regulating interstate commerce, and specifically under the provisions of Section 16 of said act, as amended (29 U.S.C. § 216(b)).

1. Jurisdiction is conferred on this Court by Title 28 U.S.C.A. 1337 and by Title 29 U.S.C.A. 16(b). Defendant employer is a corporation organized and existing under the laws of the State of New York, having its principal place of business located at 600 Johnson Ave. Suite C7 Bohemia, New York, 11716 within the jurisdiction of the court. At the times mentioned the defendants employed the Plaintiffs and others similarly situated.

2. This Court has jurisdiction over the New York State Law claims presented in the third Claim for Relief pursuant to 28 U.S.C. § 1367(a).

The Plaintiffs are residents of the County of Suffolk within the jurisdiction of this honorable court.

PARTIES

3. On information and belief, the defendant, KARLINE HELLERMAN, is the Chief Executive Officer, owner or sole or partial shareholder or agent of the Quality Blacktop Services, Inc.

4. On information and belief, the defendant, STEVEN HELLERMAN is the owner or sole or partial shareholder or agent of the Quality Black Stop Services Inc.

5. On information and belief, the defendants, KARLINE HELLERMAN AND STEVEN HELLERMAN, by virtue of their status as owners, shareholders, directors, and officers of the corporate defendant exercises complete control over the corporate defendant.

6. On information and belief, Steve Hellerman Driveways Corp., a corporation organized and existing under the laws of the State of New York, having its principal place of business located at 600 Johnson Ave. Suite C7 Bohemia, New York, 11716 within the jurisdiction of the court. At the times mentioned the defendants used Plaintiffs in a fungible manner inter changing them between work at Steve Hellerman Driveways Corps, and Quality Black Top Services.

7. STEVEN HELLERMAN is the owner or sole or partial shareholder or agent of the Steve Hellerman Driveways Corp.

7. On information and belief, the defendant QUALITY BLACKTOP SERVICES, INC., is engaged in a for profit business which has gross revenue in excess of \$500,000 per annum and is engaged in interstate commerce. Specifically, Defendant, QUALITY BLACKTOP SERVICES, INC., is in the business of CONSTRUCTION AND PAVING SERVICES and is an "employer" subject to the jurisdiction of the FLSA.

8. On information and belief, the defendant STEVER HELLERMANS DRIVEWAYS CORPS, is engaged in a for profit business which has gross revenue in excess of \$500,000 per annum and is engaged in interstate commerce.

9. QUALITY BLACKTOP SERVICES, INC. and Steven Hellerman Drive Ways Corp., are in the construction and paving business and are "employers" subject to the jurisdiction of the FLSA.

10. QUALITY BLACK TOP SERVICES INC., and STEVER HELLERMAN DRIVEWAYS CORP., due to the fungible nature of their enterprise operate as a single entity.

11. Plaintiff, Santos Hernandez, has been employed by defendants for the entire state and federal statutory period. He was a full time laborer/machine operator. His employment with Quality Blacktop Services, Inc., ended on July 16, 2018.

12. Plaintiff, Ferdis Delgado, has worked for the Defendants for the entire state and federal statutory period.

He was a full time laborer/machine operator. He worked for the company until May 2018.

13. Plaintiff, Manuel Campos, began working for the defendants on or about May 2016. He was a full time laborer. He worked for the company until July 15, 2018.

14. Upon information and belief, John Doe Surety Company, (hereinafter referred to "Bonding Company") is a corporation incorporated or otherwise authorized to do business under the laws of the State of New York, is engaged in the surety bonding business, and issued payment bonds to Defendant Quality Blacktop Services, Inc., in connection with publicly financed projects.

15. Upon information and belief, John Doe prime contractor, is a corporation incorporated or otherwise authorized to do business under the laws of the State of New York, who may have been the prime contractor on the prevailing wage projects.

FACTS

16. At all times pertinent to this Complaint, the Plaintiffs Santos Hernandez, Ferdis Delgado, and Manuel Campos worked as laborers/machine operators.

17. Plaintiffs routinely worked from 6:30 a.m. to 5:00 or later depending on the need. Plaintiffs usually worked six days per week.

18. Plaintiffs routinely worked in excess of 40 hours per week but Defendants failed to comply with Title 29 U.S.C.A. 201-219, in that the Plaintiffs worked for the Defendants in excess of the maximum hours provided by the Act, but no provision was made by the Defendants to pay the Plaintiffs the overtime required by the Act.

19. Plaintiff, Santos Hernandez during the statutory period earned from \$16.00 to \$22.00 per hour. He was paid part in cash and part in check. The overtime hours for most of his employment was paid in cash at the straight time rate.

20. In or about 2017, defendants began paying Santos Hernandez some overtime hours on the books. However, defendants falsely reported that Plaintiff earned \$18.00 an hour to lower the overtime rate he was owed.

21. Defendants only reported some of Santos Hernandez's overtime hours worked on payroll. The remaining overtime hours were paid at \$22.00 per hours, which was his regular rate of pay.

22. Plaintiff, Ferdis Delgado was paid was paid \$20.00 per hour. The overtime hours were paid in cash at the straight time rate off the books.

23. In or about 2017, Defendants started reporting some of the overtime hours on payroll. However, they lowered Ferdis Delgado's hourly rate to \$12.50 to avoid paying the correct

overtime and only reported a portion of the overtime hours. The remaining overtime hours were paid in cash at \$20.00 per hour, which was his regular rate of pay.

24. Plaintiff, Manuel Campos was paid was paid \$15.00 per hour. The overtime hours were paid in cash at the straight time rate off the books.

25. Like Santos Hernandez and Fredis Delgado Defendants only reported a portion of the overtime hours worked. The remaining overtime hours were paid in cash at \$15.00 per hour, which was his regular rate of pay.

26. The Plaintiffs performed labor for the defendants, or one or more of the defendants, for certain projects located in New York State which were public works improvements and/or tree removal projects within the meaning of New York Labor Law Articles 8, 8-A or 9 such projects including, but not limited to, construction and paving parking lots for various projects in Nassau, Suffolk, in the State of New York.

27. That the corporate defendants had one or more contracts with public entities which contracts required the payment of prevailing wages, as per New York Labor Law Articles 8, 8-A, or 9, to workers, and corporate defendant acted as a contractor or sub-contractor on one or more of such contracts.

28. Throughout their employment plaintiffs worked on prevailing wage projects. Plaintiffs were not paid the

prevailing wage rate, misclassified and/or paid less than what the State's wage schedules required.

29. That the corporate defendants had a duty to pay the employees working on those public works projects according to the terms delineated in the contract and failed to pay its employees according to the specified terms.

30. That as to the tort causes of action pled herein it is alleged that such causes of action are exempt from the provisions of CPLR Article 16 pursuant to CPLR § 1602 and that all of the defendants are jointly and severally liable for the Plaintiffs damages.

31. The various actions taken by the individual defendants to effectuate their overtime and prevailing wage payment evasion scheme include the following:

a) Intentionally failing to maintain accurate records of wage payments made to workers, such as the Plaintiffs, that showed the actual overtime hours the Plaintiffs worked;

b) Intentionally failing to pay workers, such as the Plaintiffs, wages and overtime wages for work in excess of 40 hours per week;

c) Failing to and/or falsifying records and documents indicating that workers, such as the Plaintiffs, were being paid

the appropriate prevailing rate wages as required by New York State Law;

d) Setting up and/or maintaining the corporate defendants in an attempt to shield the individual defendants from any personal liability for their illegal actions, such as a corporate defendant being merely a front or agent which the individual defendants used in the furtherance of their illegal scheme.

32. The individual defendants took it upon themselves to deny the Plaintiffs the payment of the Plaintiffs' full, legal and proper wages such actions being undertaken by the individual defendant intentionally, with full knowledge of their illegality, and for the specific purpose of personally enriching the individual defendants at the expense of the Plaintiffs.

33. The individual defendants, by intentionally acting to violate the laws, rules, regulations, statutes and wage orders alleged herein, and/or by virtue of their position as controlling owners and/or managers of the corporate defendant, and/or by acting as the Plaintiffs' employer within the meaning of the FLSA, assumed personal liability for the claims of the Plaintiffs herein.

34. The individual defendants, as part of an overtime and prevailing wage payment evasion scheme, have vitiated the independent legal existence of the corporate defendants and as a

result have made themselves, along with the corporate defendants, jointly and severally, liable for the claims made herein.

35. The individual defendants operated, acted and/or otherwise took action through their control of the corporate defendant to consciously deprive the plaintiffs of overtime and/or other wages due them under common law and New York State Law. The individual defendants undertook such actions on their own initiative and for their own benefit and did not take such actions simply at the behest of or as an agent of the corporate defendant and that such actions by the individual defendants were illegal and "ultra vires" to the corporate defendant thus destroying any separate and independent legal existence of the corporate defendant for the purposes of the claims made by Plaintiffs herein and making the individual defendant(s) personally liable for such claims.

36. This action is brought to recover from the Defendants unpaid overtime compensation, as well as an additional equal amount in liquidated damages, costs and reasonable counsel fees under the provisions of Title 29 U.S.C.A. 201 et seq., and specifically under the provisions of Title 29 U.S.C.A. 216(b), and the Labor Law of the State of New York, including but not limited to, Articles 6, 8, 9 and 19, New York Labor Law §§ 191, 193, 198, 198-b, 220-g, 223, 239-a, 652, 662 and 663, the

Wage Orders issued under the NYMWA at 12 N.Y.C.R.R. §§ 137-142, and the common law.

37. Defendants, conduct was willful as it manifested a blatant disregard for the law. Moreover, the pattern and practice of blatantly violating the Fair Labor Standards Act was not a single incident violation. The defendant company engaged in a pattern and practice of wage violations for an extended period of time, and this practice effected many similarly situated workers.

38. That the defendants have willfully violated the statutes and regulations which are alleged in this Complaint and which form the basis of Plaintiffs claims for relief.

39. The Plaintiffs are entitled to compensation at the rate of one and one half times the regular rate of pay at which they were employed, for hours worked in excess of 40. Along with compensation for work undertaken on prevailing wage projects at the correct prevailing wage rate. All of which the Defendants failed and refused to pay to the Plaintiffs.

40. The undersigned SANTOS HERNANDEZ, FERDIS DELGADO, AND MANUEL CAMPOS employees of Defendants, QUALITY BLACK TOP SERVICES INC., and STEVE HELLERMAN DRIVEWAYS CORP. et al. consent to becoming party Plaintiffs in the above-captioned matter.

**AS AND FOR A FIRST CLAIM FOR RELIEF PURSUANT TO
THE FEDERAL FAIR LABOR STANDARDS ACT ON BEHALF OF
SANTOS HERNANDEZ, FERDIS DELGADO, MANUEL CAMPOS, AND SUCH
OTHER PERSONS WHO CONSENT IN
WRITING TO JOIN THIS ACTION PURSUANT TO 29 U.S.C. § 216(B)**

41. The Plaintiffs brings this First Claim for Relief pursuant to 29 U.S.C. § 216(b) on behalf of themselves and all other similarly situated persons who consent in writing to join this action pursuant to 29 U.S.C. § 216(b), and upon information and belief there are numerous such similarly situated persons.

42. Pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 206 and § 207, the Plaintiffs was entitled to a minimum an overtime hourly wage of time and one-half their regular hourly wage for all hours worked in excess of forty hours per week, Plaintiffs worked more than 40 hours per week for the defendants, and defendants willfully failed to make said overtime wage payments.

42. The Plaintiffs on behalf of themselves and all other similarly situated persons who consent in writing to join this action, seeks, on this First Claim for Relief, a judgment for unpaid overtime wages, such sums to be determined based upon an accounting of the hours worked by, and wages actually paid to, the Plaintiffs and such other similarly situated persons who consent in writing to join this action, and the Plaintiffs also seeks an award of liquidated damages equal to 100% of such

amount, attorney's fees, interest and costs as provided for by the FLSA.

**AS AND FOR A SECOND CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFFS
AS A THIRD PARTY CONTRACT BENEFICIARY**

43. Plaintiffs repeat and reallege each and every allegation previously set forth herein.

44. That the defendants, or one or more of the Defendants, entered into contracts with one or more third parties to perform the tree removal/pruning services which the Plaintiffs provided labor for.

45. That when the defendants or one or more of the defendants, entered into the aforesaid contracts to perform the work which the Plaintiffs provided labor for such defendants agreed as part of such contracts and/or as a matter of law were required to by such contracts to pay the Plaintiffs a "prevailing wage" which was specified in such contracts or was incorporated by reference in such contracts.

46. That the Plaintiffs were a third party beneficiary of the aforesaid contracts.

47. That the defendants, or one or more of the defendants, breached the aforesaid contracts in that they failed to pay the Plaintiffs the prevailing wages required under such contracts, and that the Plaintiffs did not receive the monies he was due as

a third party beneficiary of the aforesaid contracts which provided for the payment of a prevailing wage to the Plaintiffs.

48. The Plaintiffs seek, on this Second Claim for Relief, a judgment for damages based upon an accounting of the amount of money the Plaintiffs were paid and the amount of money they should have been paid as a third party beneficiaries of such contracts, together with an award of interest, costs, disbursements, attorney's fees, liquidated damages, and such other relief as the Court deems proper.

**AS AND FOR A THIRD CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFFS AS WORKERS
ENTITLED TO THE FULL PAYMENT OF HIS
WAGES AND PAYMENT OF OVERTIME WAGES AS PER THE
NEW YORK STATE LABOR LAW**

49. Plaintiffs repeat and reallege each and every allegation previously set forth herein.

50. Pursuant to the applicable provisions of New York State Law, Plaintiffs were entitled to an overtime hourly wage of time and one-half for all hours worked in excess of forty hours per week, plaintiffs worked more than 40 hours per week for the defendants, and defendants failed to make said overtime payments.

51. At the times pertinent to this complaint, defendants failed to comply with New York State Law, including the protections set forth in Articles 6 and 19 of the Labor Law of the State of New York and the wage orders contained at 12 NYCRR

137 to 142 and Section 198 of said law, in that Plaintiffs worked for defendants in excess of the number of hours for which plaintiffs should receive their regular hourly wages under New York State Law and defendants failed to pay Plaintiffs at the rate of time and one-half for the hours worked in excess of said number of hours set forth in New York State Law and/or defendants failed to pay the Plaintiffs the overtime wage provided for under said law including the provisions under the aforesaid regulations which require payment of an additional one hour's pay for each day worked where the shift of hours is in excess of ten hours per day. Defendants have failed to otherwise pay Plaintiffs their full agreed upon and legal wages and wage supplements.

52. As a result of the foregoing, the Plaintiffs seeks, on this Third Claim for Relief, from the defendants various sums of money in overtime wages and/or other wages that defendants failed to pay Plaintiffs in violation of the Labor Law of the State of New York and the Wage Orders issued there under, together with an award of costs, reasonable attorney's fees from the defendants, interest, and liquidated damages equal to 100% of the amount of such unpaid wages and wage supplements.

**AS AND FOR A FOURTH CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFFS
BASED UPON NEGLIGENCE**

53. Plaintiffs repeat and reallege each and every allegation previously set forth herein.

54. That the individual defendant(s) or one or some of them, had a duty to the Plaintiffs, in that such defendant(s) were handling the cash or paychecks which constituted the payments for the wages owed to the Plaintiffs by their employer(s) and/or were otherwise involved in running or managing the employer(s) of Plaintiffs and as such had a duty to use reasonable care in the handling of such cash and paychecks and/or use reasonable care in respect to their running and managing of the Plaintiffs employers(s) and in having such employer(s) of the Plaintiffs pay the Plaintiffs their full, proper, and legally required wages.

55. That the individual defendant(s) or one or some of them, breached their duty of reasonable care towards the Plaintiffs by negligently handling the wage payments owed to the Plaintiffs and/or in otherwise being negligent in their managing and running of the Plaintiffs employer(s), such lack of reasonable care by such defendant(s) being the direct and proximate cause of the Plaintiffs' damages arising from the failure of the Plaintiffs to receive his full, legal, and proper wages from the Plaintiffs employer(s).

56. That the individual defendant(s), or one or some of them, were negligent and such negligence damaged the Plaintiffs

and the Plaintiffs, seeks, on this Fourth Claim for Relief, from such individual defendant(s) various sums of money in overtime wages and/or other wages and wage supplements that should have been paid to the Plaintiffs but was not paid to Plaintiffs as a result of the negligence of such individual defendant(s). damages, and attorney's fees as awardable by statute.

**AS AND FOR A FIFTH CLAIM FOR RELIEF
ON BEHALF OF PLAINTIFFS
AGAINST JOHN DOE BONDING ENTITIES BASED UPON
NEW YORK STATE LABOR LAW SECTION 220-G**

57. Plaintiffs repeat and reallege each and every allegation previously set forth herein.

58. The defendant Western Surety Company (the "bonding entity"), has agreed to act as the surety for the other defendants by posting bond(s) pursuant New York State Finance Law § 137 to assure the other defendants, or some of the other defendants, compliance with New York Labor Law Article 8, 8-A and/or 9 and/or otherwise have become legally liable to the Plaintiffs for their claims against the other defendants.

59. That the plaintiffs, pursuant to New York State Labor Law § 220-g, seeks from the bonding entity the payment of the wages, wage supplements, liquidated damages, attorney's fees and the other relief that the Plaintiffs are entitled to from his

employers pursuant to New York Labor Law Article 8, 8-A and/or 9 and/or any other theory of recovery.

**AS FOR THE SIXTH CLAIM FOR RELIEF ON BEHALF OF THE PLAINTIFFS
FEDERAL RULE OF CIVIL PROCEDURE RULE 23 CLASS ACTION
ALLEGATIONS**

60. Plaintiffs also bring New York Labor Law claims on behalf of themselves and a class of persons under Rule 23 of the Federal Rules of Civil Procedure consisting of all persons who work or have worked for defendants in the State of New York at any time from the six (6) years prior to the filing of this complaint to the entry of the judgment in the case (the "Rule 23 Class").

1. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

2. The Rule 23 Class Members are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendant.

3. Defendants have acted or have refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

4. There are questions of law and fact common to the Rule 23 Class that predominate over any questions solely affecting individual members of the Rule 23 Class, including

but not limited to:

a) Whether the defendants unlawfully failed to pay proper compensation in violation of and within the meaning of the New York Labor Law Article 6, 190 et seq. and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142;

b) Whether the defendants unlawfully failed to pay proper compensation in violation of and within the meaning of the New York Labor Law Article 6, 193 et seq. and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 146-1.7,146-1.8;

c) Whether the New York Class Representatives and Rule 23 Class are non-- exempt from entitlement to premium compensation for hours worked in excess of forty (40) hours per week;

d) Whether defendants have failed to keep true and accurate time records for all hours worked by Plaintiffs and the Rule 23 Class;

e) What proof of hours worked is sufficient when an employer fails in its duty to maintain true and accurate time records;

f) What were the policies, practices, programs, procedures, protocols and plans of Defendant regarding payment of overtime wages;

g) Whether defendants failed and/or refused to pay

Plaintiffs and the Rule 23 Class overtime pay for hours worked in excess of 40 hours per work week within the meaning of New York Labor Law Article 19, §650 et seq., and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142;

h) Whether defendants made improper deduction from Plaintiffs and the Rule 23 Class from wages for the cost of laundering uniforms within the meaning of New York Labor Law Article 6, §1930 et seq., and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 146- 1.7, 146-1.8.

i) The nature and extent of Rule 23 Class-wide injury and the appropriate measure of damages for the class;

j) Whether defendants' general practice of failing and/or refusing to pay Plaintiffs and the Rule 23 Class overtime pay for hours worked in excess of 40 hours per work week was done willfully or with reckless disregard of the federal and state wage and hour laws.

61. The claims of the Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent and the Rule 23 Class work or have worked for defendants in non-exempt positions and have not been paid overtime wages for the hours that they have worked in excess of 40 hours per week. Defendants have acted and have refused to act on grounds

generally applicable to the Rule 23 Class, thereby making declaratory relief with respect to the Rule 23 Class appropriate.

62. Plaintiffs' claims are typical of those claims which could be alleged by any member of the Class, and the relief sought is typical of the relief which would be sought by each member of the Class in separate actions. All the Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay overtime compensation for hours worked in excess of forty (40) hours each week.

63. Plaintiffs will fairly and adequately represent and protect the interests of the Rule 23 Class.

64. Plaintiffs have retained counsel competent and experienced in complex class actions and in labor and employment litigation.

65. A class action is superior to other available methods for the fair and efficient adjudication of this litigation, particularly in the context of a wage and hour litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary

duplication of efforts and expense that numerous individual actions engender. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant savings of these costs. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of defendants' common and uniform policies, practices and procedures. Although the relative damages suffered by individual Rule 23 Class Members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about defendants' practices.

66. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing those risks.

SEVENTH CLAIM FOR RELIEF

WAGE NOTICE VIOLATIONS PURSUANT TO NYLL 195(1)

67. Defendants failed to provide Plaintiff and other similarly situated employees with wage notice at the time of hiring.

68. NYLL 195(1) states pertinent part that an employer is to provide his or her employees, at the time of hiring, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances.

69. As a result of Defendants violation of the wage notice provisions, Plaintiff and similarly situated employees are entitled to the statutory penalty, plus attorney's fees.

EIGHTH CLAIM FOR RELIEF

WAGE STATEMENT VIOATIONS PURUSANT TO NYLL 195(3)

70. Defendants failed to provide Plaintiff and other similarly situated employees with accurate wage statements upon each earning cycle.

71. NYLL 195(3) states in pertinent part that an employer is to provide his or her employees with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day,

week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

72. Defendants violated the provision of the NYLL 195(3) by paying the Plaintiffs and other similarly situated employees' exclusively in cash and off the books. At no time tendering to them wage statements.

73. As a result of defendants' violation of the wage statement provisions, Plaintiffs and similarly situated employees are entitled to the statutory penalty plus attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief:

(i) Unpaid wages and an additional and equal amount as liquidated damages pursuant to 29 U.S.C. §201 et seq. and the supporting United States Department of Labor regulations;

(ii) Unpaid wages and additional and equal amounts as liquidated damages for violations of Article 19 sec. 650.

(iii) Unpaid wages and additional and equal amounts as liquidated damages for violations of Article 6 sec. 193 and supporting New York State Department of Labor Regulations 12 N.Y.C. R.R part 146-1.7 146-1.8

(iv) Certification of this case as a collective action under 29 U.S.C. §216(b) and a class action pursuant to Rule 23 of

the Federal Rules of Civil Procedure;

(v) Designation of Plaintiffs as representative of the Rule 23 Class, and counsel of record as Class Counsel;

(vi) Damages in an amount to be determined at trial for Defendant's violation of New York State Labor Law §196-d;

(vii) Unpaid wages due to Plaintiffs under a third party beneficiary cause of action for failure to pay prevailing wage rates on public works projects.

(viii) Damages in the amount of \$5000. For each Plaintiff for wage notice violations pursuant to NYLL 195(1).

(ix) Damages in the amount of \$5000. For each Plaintiff for wage statements violations pursuant to NYLL 195(3).

(x) Certification of this case as a collective action pursuant to 216(b) of the FLSA.

(xi) All attorneys' fees and costs incurred in prosecuting these claims; and

(xii) Such other relief as this Court deems just and proper.

Dated: Brentwood, New York
August 24, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'DM', written over the word 'submitted'.

Delvis Meléndez, Esq.
Attorney for Plaintiffs
90 Bradley Street
Brentwood, NY 11717
(631) 434-1443

DISTRICT COURT OF THE STATE OF NEW YORK
EASTERN DISTRICT OF NEW YORK

-----X
SANTOS HERNANDEZ, FREDIS DELGADO AND MANUEL CAMPOS
On behalf of himself and others similarly situated

Plaintiff,

CONSENT TO JOINDER

-against-

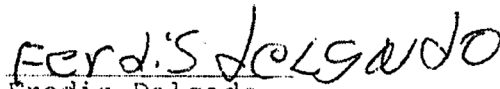
QUALITY BLACKTOP SERVICES Inc.,
STEVE HELLERMAN DRIVEWAY CORP.
KARLINE HELLERMAN and
STEVEN HELLERMAN
In their individual capacities

Defendants.

-----X

By signing below I, Fredis Delgado consent to become a party plaintiff in this lawsuit and be bound by any decision herein.

Dated: August 7, 2018


Fredis Delgado

C/O Law Offices of Delvis Melendez
90 Bradley St.
Brentwood, N.Y. 11717
63-434-1443

DISTRICT COURT OF THE STATE OF NEW YORK
EASTERN DISTRICT OF NEW YORK

-----X
SANTOS HERNANDEZ, FREDIS DELGADO AND MANUEL CAMPOS
On behalf of himself and others similarly situated

Plaintiff,

CONSENT TO JOINDER

-against-

QUALITY BLACKTOP SERVICES Inc.,
STEVE HELLERMAN DRIVEWAY CORP.
KARLINE HELLERMAN and
STEVEN HELLERMAN
In their individual capacities

Defendants.

-----X

By signing below I, Santos Hernandez consent to become
a party plaintiff in this lawsuit and be bound by any decision
herein.

Dated: August 7, 2018


Santos Hernandez

C/O Law Offices of Delvis Melendez
90 Bradley St.
Brentwood, N.Y. 11717
63-434-1443

DISTRICT COURT OF THE STATE OF NEW YORK
EASTERN DISTRICT OF NEW YORK

-----X
SANTOS HERNANDEZ, FREDIS DELGADO AND MANUEL CAMPOS
On behalf of himself and others similarly situated

Plaintiff,

CONSENT TO JOINDER

-against-

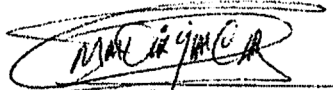
QUALITY BLACKTOP SERVICES Inc.,
STEVE HELLERMAN DRIVEWAY CORP.
KARLINE HELLERMAN and
STEVEN HELLERMAN
In their individual capacities

Defendants.

-----X

By signing below I, Manuel Campos consent to become a party plaintiff in this lawsuit and be bound by any decision herein.

Dated: August 7, 2018


Manuel Campos

C/O Law Offices of Delvis Melender
90 Bradley St.
Brentwood, N.Y. 11717
63-434-1443

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

JS 44 (Rev. 01/29/2018)

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 judges of the court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

★ **AUG 27 2018** ★

I. (a) PLAINTIFFS
SANTOS HERNANDEZ, FERDIS DELGADO AND MANUEL CAMPOS
ON BEHALF OF THEMSELVES OF OTHERS SIMILARY SITUATED

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
LAW OFFICES OF DELVIS MELENDEZ
90 BRADLEY ST. BRENTWOOD, N.Y 11717 631-434-1443

DEFENDANTS
QUALITYBLACKTOP SERVICES INC. SEVEN HOLLOW DRIVE
DRIVEWAY CORP. KARLINE HELLERMAN AND STEVEN
HELLERMAN
County of Residence of First Listed Defendant Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) **CV-18 4862**
BIANCO, J.
LINDSAY, M.J.

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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input checked="" 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"/> 625 Drug Related Scizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 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 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) 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"/> 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 <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
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	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

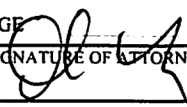
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C.A 216(b)

Brief description of cause:
Overtime pay violations and prevailing wage violations

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 8/27/2018 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # 25982 AMOUNT \$400.00 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.

Case is Eligible for Arbitration

I, _____, counsel for _____, 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? Yes 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 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 No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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? Yes No

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

BAR ADMISSION

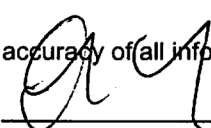
I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

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: 

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Alleges Blacktop Companies Underreported Laborers' Overtime Hours](#)
