

JS 44 (Rev. 07/16)



CIVIL COVER SHEET

16-cv-6239

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
James Mitchell and Rodney Gressley, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Murphy Law Group, LLC, Eight Penn Center, Suite 1803, 1628 John F. Kennedy Blvd., Philadelphia, PA 19103, TEL: 267-273-1054

DEFENDANTS
Stonemor Partners, L.P.

16 6239

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

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

Attorneys (If Known)
MLG

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)

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 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 Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
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	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	<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
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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. § 201, et seq.

Brief description of cause:
Claims for unpaid wages pursuant to the FLSA and state law

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 NOV 29 2016

DATE 11/29/2016 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

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

PD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2 Ironhorse Circle, Palmyra, PA 17078; 18 King Arthur Drive, Mill Hall, PA 17751

16 6239

Address of Defendant: 3600 Horizon Blvd., Suite 100, Trevoise, PA 19053

Place of Accident, Incident or Transaction: 1921 Ritner Highway, Carlisle, PA 17013; 1032 Benner Pike, State College, PA 16801 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [] No [X]

Does this case involve multidistrict litigation possibilities? Yes [] No [X]

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. [] Indemnity Contract, Marine Contract, and All Other Contracts
2. [] FELA
3. [] Jones Act-Personal Injury
4. [] Antitrust
5. [] Patent
6. [] Labor-Management Relations
7. [] Civil Rights
8. [] Habeas Corpus
9. [] Securities Act(s) Cases
10. [] Social Security Review Cases
11. [X] All other Federal Question Cases (Please specify) Fair Labor Standards Act

B. Diversity Jurisdiction Cases:

- 1. [] Insurance Contract and Other Contracts
2. [] Airplane Personal Injury
3. [] Assault, Defamation
4. [] Marine Personal Injury
5. [] Motor Vehicle Personal Injury
6. [] Other Personal Injury (Please specify)
7. [] Products Liability
8. [] Products Liability — Asbestos
9. [] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Michael Murphy, counsel of record do hereby certify:

- [X] Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$50,000.00 exclusive of interest and costs;
[] Relief other than monetary damages is sought.

DATE: 11/29/2016

Attorney-at-Law

91262

Attorney I.D.#

NOTE: A trial de novo will be held by jury only if there has been compliance with F.R.C.P. 38.

NOV 29 2016

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/29/2016

Attorney-at-Law

91262

Attorney I.D.#

PD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

James Mitchell and Rodney Gressley, individually
and on behalf of all others similarly situated

CIVIL ACTION

v.

16 6239

Stonemor Partners, L.P.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

11/29/2016

Date

267-273-1054

Telephone

[Handwritten Signature]
Attorney-at-law
215-525-0210

FAX Number

Plaintiffs, James Mitchell and Rodney Gressley

Attorney for

murphy@phillyemploymentlawyer.com

E-Mail Address

PD

MURPHY LAW GROUP, LLC
ATTORNEYS AT LAW

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16 6239

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Michael Murphy, Esquire (Admitted in PA and NJ)
Michael Groh, Esquire (Admitted in PA, NJ, and NY)
Erica E. Kane, Esquire (Admitted in PA and NJ)
Megan L. Davis, Esquire (Admitted in PA)
Daniel S. Orlow, Esquire (Admitted in PA and NJ)

November 29, 2016

Via Hand-Delivery

Clerk of Court
United States District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

Re: James Mitchell and Rodney Gressley v. StoneMor Partners, L.P.

Dear Sir/Madam,

Enclosed, for filing with respect to the above-referenced matter, please find an original and three copies of the Plaintiff's Civil Action Complaint, a Civil Cover Sheet, and a check made payable to Clerk, United States District Court, in the amount of \$400.00. Please time-stamp the extra copy of the Complaint and return it to me in the self-addressed envelope I have enclosed. A PDF copy of the Complaint has been saved on the enclosed disk.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,


Michael Murphy

MM/jw

Murphy Law Group, LLC

November 29, 2016

Re: James Mitchell and Rodney Gressley v. StoneMor Partners, L.P.

Enclosures

cc: James Mitchell (via electronic mail)
Rodney Gressley (via electronic mail)

Handwritten initials/signature

PD

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES MITCHELL
2 Ironhorse Circle
Palmyra, PA 17078

RODNEY GRESSLEY
18 King Arthur Drive
Mill Hall, PA 17751

individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

STONEMOR PARTNERS L.P.
3600 Horizon Blvd., Suite 100
Trevose, PA 19053

Defendant.

16 6239

Civil Action No.: _____

Jury Trial Demanded

COLLECTIVE AND CLASS ACTION COMPLAINT

Plaintiffs Jim Mitchell ("Mr. Mitchell") and Rodney Gressley ("Mr. Gressley")
(collectively "Plaintiffs"), individually and on behalf of all other similarly situated employees of
Stonemor Partners, L.P. ("Defendant"), by and through their undersigned counsel, bring this
Collective and Class Action Complaint ("Complaint") against Defendant and allege, upon
personal belief as to themselves and their own acts, and as for all other matters upon information
and belief, as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this Complaint on behalf of themselves and others similarly
situated contending that Defendant has improperly failed to pay compensation and overtime

compensation to its Sales Managers pursuant to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.100 *et seq.*, and the Pennsylvania Wage Payment and Collection Law (“WPCL”), Pa. Con. Stat. § 260.1 *et seq.*

2. Plaintiffs are current employees of Defendant where they are employed as Sales Managers. During the course of their employment, Plaintiffs have not had their hours of work accurately tracked and recorded by Defendant, and also regularly work/worked more than forty (40) hours per week, but were/are not properly compensated for their work and/or were/are not paid overtime compensation as required by the FLSA.

3. As a result of Defendant’s improper and willful failure to track and record the hours actually worked by its Sales Managers and to pay its Sales Managers in accordance with the requirements of the FLSA and PMWA, Plaintiffs and others similarly situated have suffered damages.

4. Plaintiffs bring this action for monetary damages, declaratory and injunctive relief, and other equitable and ancillary relief, to seek redress for Defendant’s willful, unlawful and improper conduct.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 216(b), which provides, in relevant part, that suit under the FLSA “may be maintained against any employer . . . in any Federal or State court of competent jurisdiction.” See 29 U.S.C. § 216(b).

6. This Court has supplemental jurisdiction over Plaintiffs’ state law claims because those claims arise out of the same nucleus of operative fact as their federal law claims.

7. The venue in this district is proper pursuant to 28 U.S.C. § 1391(b), as the parties reside in this district, conducting business therein, and the unlawful practices of which Plaintiffs are complaining were committed in this district.

PARTIES

8. “Class Plaintiffs” are the individuals named above and those who file “opt-in” consent forms with the Court.

9. Plaintiff James Mitchell is a citizen of the United States and Pennsylvania, where he maintains a residence at 2 Ironhorse Circle, Palmyra, PA 17078.

10. Plaintiff Rodney Gressley is a citizen of the United States and Pennsylvania, where he maintains a residence at 18 King Arthur Drive, Mill Hall, PA 17751.

11. Upon information and belief, Defendant Stonemor Partners, L.P. is a limited partnership with a principal place of business located at 3600 Horizon Boulevard, Suite 100, Trevose, PA 19053.

12. Defendant is a “private employer” and subject to the provisions of the FLSA, PMWA, and WPCL.

13. Plaintiffs are current employees of Defendant and as such are employees entitled to the protections of the FLSA, PMWA, and WPCL.

14. At all times relevant hereto, Defendant acted or failed to act through its agents, servants and/or employees thereto existing, each of whom acted at all times relevant hereto in the course and scope of their employment with and for Defendant.

FLSA COLLECTIVE ACTION ALLEGATIONS

15. This action is brought as a collective action to recover unpaid overtime compensation, liquidated damages, unlawfully withheld wages, statutory penalties and damages owed to Plaintiffs and all similarly situated current and former employees of Defendant.

16. Pursuant to 29 U.S.C. § 216(b) of the FLSA, Plaintiffs bring this action individually and on behalf of all other similarly situated persons presently or formerly employed by Defendant in the position of Sales Manager or in positions with similar job duties who were subject to Defendant's unlawful pay practices and policies described herein and who worked for Defendant at any point in the three years preceding the date the instant action was initiated (the members of the putative class are hereinafter referred to as the "Class Plaintiffs").

17. Plaintiffs estimate that there are approximately fifty (50) to sixty (60) other Plaintiffs who either were or are working for Defendant and were unlawfully denied overtime compensation for hours worked in excess of forty (40) in a workweek. The precise number of employees can be easily ascertained by Defendant. These employees can be identified and located using Defendant's payroll and personnel records. Potential Class Plaintiffs may be informed of the pendency of this Collective Action by direct mail and/or publication.

18. Pursuant to 29 U.S.C. § 216(b), this action is properly maintained as a collective action because all the class members are similarly situated. Plaintiffs and other similarly situated employees were similarly not paid an overtime premium for hours worked in excess of forty (40) in a workweek, had the same job classification and job duties, and were subject to the same uniform policies, business practices, payroll practices, and operating procedures. Further, Defendant's willful policies and practices, which are discussed more fully in this Collective and Class Action Complaint, whereby Defendant failed to pay Class Plaintiffs an overtime premium for all hours worked over 40 hours in a workweek, have affected Plaintiffs and Class Plaintiffs in the same fashion.

19. Plaintiffs will request the Court to authorize notice to all current and former similarly situated employees employed by Defendant, informing them of the pendency of this

action and their right to “opt-in” to this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid compensation, overtime compensation and liquidated damages under the FLSA.

CLASS ACTION ALLEGATIONS

20. Plaintiffs bring this action individually, and on behalf of the following state-wide class of similarly situated individuals, pursuant to Rule 23 of the Federal Rules of Civil

Procedure:

All persons presently or formerly employed by Defendant during the last three (3) years in the position of Sales Manager or in positions with similar job duties who were denied overtime compensation for work performed in excess of forty (40) hours in a workweek.

21. The members of the class are so numerous that joinder of all members is impractical. Class members may be informed of the pendency of this Class Action by direct mail.

22. Pursuant to Federal Rule of Civil Procedure 23(a)(2), there are questions of law and fact common to the Class, including, but not limited to:

A. Whether Plaintiffs and the Class are entitled to overtime compensation for services rendered in excess of forty (40) hours per week;

B. Whether Plaintiffs and the Class worked in excess of forty (40) hours per week;

C. Whether Plaintiffs and the Class have suffered and are entitled to damages, and if so, in what amount; and

D. Whether Defendant failed to pay Plaintiffs and the Class wages and overtime compensation in the period when said wages became due and owing.

23. Plaintiffs’ claims are typical of the claims of the Class members. Plaintiffs are current employees of Defendant who are employed in the position of Sales Manager and who

have suffered similar injuries as those suffered by the Class members as a result of Defendant's failure to pay wages and overtime compensation. Defendant's conduct of violating the FLSA/PMWA have affected Plaintiffs and the Class in the exact same way.

24. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs are similarly situated to the Class and have no conflict with the Class members.

25. Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in class action litigation.

26. Pursuant to Rules 23(b)(1), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, this action is properly maintained as a class action because:

A. The prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class that would establish incompatible standards of conduct for Defendant;

B. Defendant, by failing to pay overtime compensation when it became due and owing, has acted or refused to act on grounds generally applicable to the Class, thereby making equitable relief appropriate with respect to the Class as a whole; and

C. The common questions of law and fact set forth above applicable to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this case, especially with respect to considerations of consistency, economy, efficiency, fairness and equity, as compared to other available methods for the fair and efficient adjudication of the controversy.

27. A class action is also superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impractical. Class action treatment will allow a large number of similarly situated persons to prosecute their

common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense if these claims were brought individually. Additionally, as the damages suffered by each Class member may be relatively small, the expenses and burden of individual litigation would make it difficult for the Class members to bring individual claims. The presentation of separate actions by individual Class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of each member of the Class to protect his or her interests.

FACTUAL BACKGROUND

28. Paragraphs 1 through 27 are hereby incorporated by reference as though more fully set forth at length herein.

29. Defendant hired Mr. Mitchell on or about May 2, 2016 as a Sales Manager out of Defendant's Carlisle location, located at 1921 Ritner Highway, Carlisle, PA 17013.

30. Defendant hired Mr. Gressley on or about May 2, 2016 as a Sales Manager working out of Defendant's State College location, located at 1032 Benner Pike, State College, PA 16801.

31. Throughout the duration of their employment with Defendant, Plaintiffs and Class Plaintiffs performed the same non-exempt job duties, which predominantly involve/involved opening and closing Defendant's facilities, conducting routine bookkeeping and data entry tasks, scheduling shifts for Defendant's employees, and acting as a point of contact for customers with concerns and/or complaints.

32. In carrying out the foregoing responsibilities, Plaintiffs and Class Plaintiffs follow/followed established company protocols, and as such, were/are not afforded the

opportunity to exercise independent discretion over matters of significance. In this regard, Plaintiffs' and Class Plaintiffs' job duties were/are comprised mainly of standard administrative and customer service tasks, and Plaintiffs and Class Plaintiffs do/did not have the authority to change and/or alter any of Defendant's established policies and practices.

33. Plaintiffs and Class Plaintiffs were/are not authorized to make purchases and/or enter into contracts on behalf of the company without prior authorization.

34. As an example, in or around October of 2016, Mr. Gressley requested and was denied a \$50.00 weekly allowance for various office supply purchases as the need for such supplies arose.

35. Plaintiffs and Class Plaintiffs did/do not have the authority to make decisions regarding personnel matters, nor did/do they have authority to make alterations to benefits enrollment paperwork, 401(k) forms, or other Human Resources documents.

36. Plaintiffs and Class Plaintiffs did/do not have the authority to hire and/or fire employees of Defendant, nor are their opinions related to hiring and firing given any significant weight.

37. By way of example, in or around August of 2016, Mr. Gressley requested authorization to hire an additional employee to work out of Defendant's State College location, and this request was summarily denied.

38. By way of further example, in or around August of 2016, Mr. Mitchell requested authorization to fire an employee who he believed had been drinking on the job. This request was likewise summarily denied by Mr. Mitchell's supervisor, Marci Goldshlack ("Ms. Goldshlack").

39. Throughout the duration of their employment with Defendant, Plaintiffs have routinely worked in excess of forty (40) hours per week. In fact, in a typical workweek, Plaintiffs work approximately sixty (60) to seventy (70) hours.

40. Upon information and belief, Class Plaintiffs routinely work in excess of forty (40) hours per week. In fact, in a typical workweek, Plaintiff and Class Plaintiffs typically work between fifty-five (55) and seventy (70) hours.

41. Despite working in excess of forty (40) hours per week for nearly every week they have worked for Defendant, Plaintiffs and Class Plaintiffs were/are not paid overtime compensation at a rate of 1.5 times their regular rate for hours worked in excess of 40 in a workweek. Rather, Plaintiffs and Class Plaintiffs were/are paid a straight, unchanging salary regardless of the number of hours they actually work.

42. Further, at no point during their employment with Defendant were Plaintiffs' and Class Plaintiffs' hours accurately tracked. Plaintiffs and Class Plaintiffs were not required to submit time sheets, clock in and clock out, or otherwise report their actual hours worked.

43. In violation of the FLSA and PMWA, Defendant unlawfully failed to track, record, and report all hours worked by Plaintiffs and Class Plaintiffs.

44. As outlined above, Plaintiffs and Class Plaintiffs performed the same, traditionally non-exempt administrative and customer service job duties.

45. Plaintiffs and Class Plaintiffs were misclassified as "exempt" from the overtime provisions of the FLSA and PMWA, and Defendant thus determined they were not entitled to overtime compensation for hours worked in excess of forty (40) hours in a workweek.

46. Although Defendant unlawfully misclassified Plaintiffs and Class Plaintiffs as “exempt,” Plaintiffs and Class Plaintiffs were not exempt from receiving overtime, in that they did/do not meet the requirements for one or more exemptions under the FLSA and/or PMWA.

47. Plaintiffs and Class Plaintiffs do/did not have the authority to hire, fire and/or discipline other employees employed by Defendant without prior authorization, nor are their opinions regarding hiring and/or firing given any significant weight. Thus, Plaintiffs and Class Plaintiffs were/are not exempt from overtime compensation pursuant to the exemption for executive employees under the FLSA/PMWA.

48. Additionally, Plaintiffs and Class Plaintiffs do/did not exercise independent judgment or have discretion to act without immediate supervision as to matters of significance to Defendant’s business. As set forth above, Plaintiffs and Class Plaintiffs were generally not permitted to incur expenses, enter into contracts on Defendant’s behalf, or establish new policies or practices without prior authorization. Thus, Plaintiffs and Class Plaintiffs were/are not exempt from overtime compensation pursuant to the exemption for administrative employees under the FLSA/PMWA.

49. Finally, there are no other exemptions under the FLSA and/or PMWA which could arguably be applicable to Plaintiffs and Class Plaintiffs.

50. Accordingly, Plaintiffs and Class Plaintiffs were/are, within the meaning of the FLSA and PMWA, non-exempt employees of Defendant and were/are entitled to overtime pay at a rate of 1.5 times their regular rate(s) of pay for each hour worked in excess of forty (40) in a workweek.

51. Defendant failed to pay Plaintiffs and Class Plaintiffs at a rate of 1.5 times their regular rate of pay for each hour they worked in excess of forty (40) in a workweek.

52. As a result of Defendant's aforesaid illegal actions, Plaintiffs and Class Plaintiffs have suffered damages.

COUNT I
FAIR LABOR STANDARDS ACT
FAILURE TO PAY OVERTIME COMPENSATION

53. Paragraphs 1 through 52 are hereby incorporated by reference as though the same were more fully set forth at length herein.

54. Pursuant to Section 206(b) of the FLSA, all employees must be compensated for every hour worked in a workweek.

55. Moreover, Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to 1.5 times his or her regular rate of pay, for all hours worked in excess of forty (40) hours per week.

56. According to the policies and practices of Defendant, Plaintiffs and Class Plaintiffs worked in excess of forty (40) hours per week. Despite working in excess of 40 hours per week, Plaintiffs and Class Plaintiffs were denied overtime compensation for compensable work performed in excess of 40 hours per week in violation of the FLSA. Defendant failed to pay Plaintiffs and Class Plaintiffs at a rate of at least 1.5 times their regular rate of pay for each hour that they worked in excess of forty hours in a workweek.

57. The foregoing actions of Defendant and the policies and practices of Defendant violate the FLSA.

58. Defendant's actions were willful, not in good faith, and in reckless disregard of clearly applicable FLSA provisions.

59. Defendant is liable to Plaintiffs and Class Plaintiffs for actual damages, liquidated damages, and other equitable relief, pursuant to 29 U.S.C. § 216(b), as well as reasonable attorneys' fees, costs and expenses.

WHEREFORE, Plaintiffs pray for the following relief on behalf of themselves and Class Plaintiffs:

A. An Order from this Court permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. An Order from this Court ordering Defendant to file with this Court and furnish to the undersigned counsel a list of all names and addresses of all employees who have worked for Defendant during the preceding three (3) years in the position of Sales Manager and/or in positions with similar job duties, and authorizing Class Plaintiffs' counsel to issue a notice at the earliest possible time to these individuals, informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they worked for Defendant during the liability period, but were not paid overtime pay as required by the FLSA;

C. Adjudicating and declaring that Defendant's conduct as set forth herein and above is in violation of the FLSA;

D. Adjudicating and declaring that Defendant violated the FLSA by failing to pay overtime pay to Plaintiffs and Class Plaintiffs for work performed in excess of forty (40) hours per week;

E. Awarding Plaintiffs and Class Plaintiffs back pay wages and/or overtime wages in an amount consistent with the FLSA;

F. Awarding Plaintiffs and Class Plaintiffs liquidated damages in accordance with the FLSA;

G. Awarding Plaintiffs and Class Plaintiffs reasonable attorneys' fees and all costs of this action, to be paid by Defendant, in accordance with the FLSA;

H. Awarding pre- and post-judgment interest and court costs as further allowed by law;

I. Granting Plaintiffs leave to add additional Plaintiffs by motion, the filing of written opt-in consent forms, or any other method approved by the Court; and

J. For all additional general and equitable relief to which Plaintiffs and Class Plaintiffs may be entitled.

COUNT II
PENNSYLVANIA MINIMUM WAGE ACT OF 1968
FAILURE TO PAY OVERTIME COMPENSATION

60. Paragraphs 1 through 59 are hereby incorporated by reference as though the same were more fully set forth at length herein.

61. The Pennsylvania Minimum Wage Act provides that employers must pay certain "minimum wages," including overtime wages, to their employees. See 43 P.S. § 333.113.

62. The Pennsylvania Minimum Wage Act further provides that "employees shall be paid overtime not less than one and one half times the employee's regular rate" for hours worked in excess of forty (40) hours in a workweek. See 43 P.S. § 333.113.

63. By its actions alleged above, Defendant has violated the provisions of the Pennsylvania Minimum Wage Act of 1968 by failing to properly pay overtime compensation.

64. As a result of Defendant's unlawful acts, Plaintiffs and Class Plaintiffs have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with interest, costs and attorneys' fees pursuant to the Pennsylvania Minimum Wage Act of 1968.

WHEREFORE, Plaintiffs pray for the following relief on behalf of themselves and Class Plaintiffs:

A. An Order certifying this case as a class action and designating Plaintiffs as the representatives of the Class and their counsel as class counsel;

B. An award to Plaintiffs and the Class for the amount of unpaid overtime compensation to which they are entitled, including interest thereon, and penalties subject to proof;

C. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs pursuant to the PMWA; and

D. An award to Plaintiffs and the Class for any other damages available to them under applicable Pennsylvania law, and all such other relief as this Court may deem just and proper.

COUNT III
PENNSYLVANIA WAGE PAYMENT AND COLLECTION LAW
Pa. Con. Stat. § 260.1 et seq.

65. Paragraphs 1 through 64 are hereby incorporated by reference as though the same were more fully set forth at length herein.

66. By its actions alleged above, Defendant has violated the provisions of Pennsylvania's Wage Payment and Collection Law by failing to pay certain wages and benefits earned, due and owing to Plaintiffs and Class Plaintiffs pursuant to Defendant's policies, practices, and agreements with Plaintiffs and Class Plaintiffs.

67. Plaintiffs and Class Plaintiffs are entitled to compensation for hours of work which they performed for Defendant and for which they have not been properly compensated.

68. As a result of Defendant's unlawful acts, Plaintiffs and Class Plaintiffs have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, along with liquidated damages, together with costs and attorneys' fees pursuant to the WPCL.

WHEREFORE, Plaintiffs pray for the following relief on behalf of themselves and Class Plaintiffs:

A. An award to Plaintiffs and Class Plaintiffs for the amount of unpaid compensation to which they are entitled, including interest thereon, and penalties subject to proof;

B. An award to Plaintiffs and Class Plaintiffs of liquidated damages in an amount equal to twenty-five percent (25%) of the total amount of wages and benefits due pursuant to the WPCL;

C. An award to Plaintiffs and Class Plaintiffs of reasonable attorneys' fees and costs pursuant to the WPCL; and

D. An award to Plaintiffs and Class Plaintiffs for any other damages available to them under Pennsylvania law, including general and special damages according to proof, and all other relief as this Court may deem just and proper.

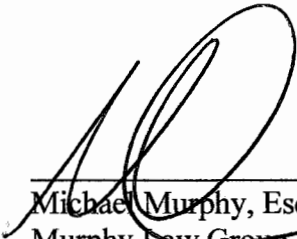
JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Respectfully submitted,

MURPHY LAW GROUP, LLC

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Attorney for Plaintiff

Dated: 11/29/2016

DEMAND TO PRESERVE EVIDENCE

The Defendant is hereby demanded to preserve all physical and electronic information pertaining in any way to Plaintiffs' employment, to their potential claims and their claims to damages, to any defenses to same, including, but not limited to electronic data storage, employment files, files, memos, job descriptions, text messages, e-mails, spreadsheets, images, cache memory, payroll records, paystubs, time records, timesheets, and any other information and/or data which may be relevant to any claim or defense in this litigation

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Stonemor Partners L.P. Allegedly Owes Sales Managers Overtime Pay](#)
