

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

| | | |
|--|---|------------------------|
| BOBBY WARRICK, JR., and VICTOR | § | |
| CRUZ, on behalf of themselves and others | § | CIVIL ACTION NO. _____ |
| similarly situated, | § | |
| | § | |
| <i>Plaintiffs,</i> | § | JURY TRIAL DEMANDED |
| | § | |
| v. | § | |
| | § | COLLECTIVE ACTION |
| ISLANDER STUCCO SYSTEMS, INC., | § | |
| and FRANK C. ADAMS, | § | |
| | § | |
| <i>Defendant.</i> | § | |
| | § | |

COLLECTIVE ACTION COMPLAINT
AND JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiffs hereby submit their Collective Action Complaint and Jury Demand and, upon trial of this matter, would show the trier of fact as follows:

I. SUMMARY

1. Islander Stucco Systems, Inc. (“ISSI”), a company in the business of residential and commercial stucco, plastering, and exterior insulation and finish system (“E.I.F.S.”) work, and Frank C. Adams (“Adams”) violated the Fair Labor Standards Act (“FLSA”) by forcing their stucco, plaster, and E.I.F.S. workers to work a substantial amount of overtime without properly paying them overtime compensation, thus depriving them of rightful compensation for their work that ISSI and Adams (collectively “Defendants”) are legally obligated to pay.

II. JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs’ claims arise under federal law, namely the FLSA, 29 U.S.C. § 201 *et seq.*

3. Venue is proper because a substantial part of the acts and omissions giving rise to Plaintiffs' claims occurred in the Southern District of Mississippi. 28 U.S.C. § 1391(b)(2).

III. THE PARTIES

4. Plaintiff Warrick worked for Defendants as a stucco, plaster, and E.I.F.S. applicator and construction worker. He regularly worked in excess of 40 hours per week without receiving the overtime compensation that he was due at one and one-half times his regular rate of pay. Plaintiff Warrick's Consent is attached as Exhibit A.

5. Plaintiff Victor Cruz worked for Defendants as a stucco, plaster, and E.I.F.S. applicator and construction worker. He regularly worked in excess of 40 hours per week without receiving the overtime compensation that he was due at one and one-half times his regular rate of pay. Plaintiff Cruz's Consent is attached as Exhibit B.

6. The class of similarly situated employees consists of all current and former applicators and construction workers who were employed by Defendants during the three-year period preceding the filing of the Original Complaint. These similarly situated individuals are referred to as the "Members of the Class" or "the Class."

7. Defendant Islander Stucco Systems, Inc. is a Mississippi corporation with a principal place of business at 1048 Thorn Avenue, Ocean Springs, Mississippi 39564 that is engaged in commerce in the United States and is otherwise subject to the FLSA. ISSI is a residential and commercial stucco, plaster, and E.I.F.S. contractor. According to ISSI's own public representations about its business, ISSI has successfully completed "thousands of jobs," and has been "Serving the Greater Gulf Coast for over 25 years."¹ ISSI represents that it performs

¹ ISSI Website, *available at* <https://www.islanderstucco.com/about1> (last visited on June 8, 2017).

residential and commercial new construction, repair, and remodeling work.² ISSI has or had (during the relevant time period) at least two or more employees engaged in commerce or in the production of goods for commerce for purposes of FLSA coverage.

8. Additionally, upon information and belief, ISSI has annual gross volume of sales made or business done of not less than \$500,000.

9. ISSI may be served with process by serving its Registered Agent, Frank C. Adams, 4900 Deborah Street, Ocean Springs, Mississippi 39564.

10. Defendant Adams is the President and a principal of ISSI, and is an individual residing in Ocean Springs, Mississippi. Adams, upon information and belief, possessed control over ISSI's actual operations in a manner that directly relates to Plaintiffs' employment and that of those similarly situated to Plaintiffs. Adams directly affected employment-related factors such as workplace conditions and/or operation, personnel, and/or compensation. Mr. Adams may be served with process at 4900 Deborah Street, Ocean Springs, Mississippi 39564.

11. Defendants employed Plaintiffs within the meaning of the FLSA.

IV. BACKGROUND

12. Defendants employed Plaintiffs and applicators and construction workers similarly situated to Plaintiffs to apply stucco, plaster, and E.I.F.S. and perform related construction work.

13. Plaintiffs and, upon information and belief, Members of the Class regularly worked in excess of 40 hours per week. However, the employees were not paid one and one-half times their regular rates for hours worked in excess of 40 each work week. When the employees worked for Defendants for more than 40 hours total in a week, their paychecks did not include any time or pay for hours worked in excess of 40 hours total in a week.

² ISSI Website, *available at* <https://www.islanderstucco.com> (last visited on June 8, 2017).

14. Defendants at times paid those non-exempt workers an improper cash payment separate from their paychecks.

15. Defendants' applicators and construction workers handle or otherwise work with goods or materials that have been moved in or produced for interstate commerce by any person.

16. Defendants engage in commerce or in the production of goods for commerce by applying stucco, plaster, and E.I.F.S. and performing related construction work on residential and commercial new construction, repair, and remodeling projects in various states.

17. Defendants pay their applicators and construction workers similarly situated to Plaintiffs by the hour utilizing a pay period that consists of one week.

V. PLAINTIFFS' INDIVIDUAL ALLEGATIONS

A. Defendants Failed to Properly Pay Compensation.

18. Plaintiffs worked with crews of Defendants' other similarly situated employees. They worked for Defendants in various states along or near the Gulf of Mexico, including Alabama, Florida, Mississippi, and Louisiana, performing stucco, plaster, and E.I.F.S. construction projects.

19. Defendants paid Plaintiffs a set hourly rate for each hour worked.

20. Defendants' pay period consisted of one week.

21. When Plaintiffs worked more than 40 hours total in a week, Defendants did not pay them overtime compensation at a rate of one and one-half times their regular rate of pay for each hour they worked in excess of 40 hours in a week. When Plaintiffs worked for Defendants for more than 40 hours total in a week, their paychecks did not include any time or pay for hours worked in excess of 40 hours.

22. Defendants at times paid Plaintiffs an improper cash payment separate from their

paycheck.

23. The FLSA requires Defendants to pay overtime compensation for each hour Plaintiffs worked in excess of 40 hours in a week. Defendants should have paid Plaintiffs overtime compensation at a rate of one and one-half times their regular rate of pay for each hour he worked in excess of 40 hours in a week, but Defendants failed to do so.

24. By failing to pay Plaintiffs their overtime rate of pay for hours they worked in excess of 40 hours in a week, Defendants have deprived Plaintiffs of a significant amount of overtime compensation to which they are rightfully entitled.

B. Defendants Willfully Violated the FLSA.

25. The FLSA and Department of Labor regulations set forth the proper means for calculating and paying compensation to non-exempt employees like Plaintiffs. Defendants failed to follow these rules when paying Plaintiffs.

26. Upon information and belief, Defendants had a policy and/or practice of not paying their stucco, plaster, and E.I.F.S. applicators and construction workers overtime compensation at a rate of one and one-half times their regular rate of pay for each they worked in excess of 40 hours in a week.

27. Defendants knew or have shown reckless disregard for the requirements of the FLSA with respect to compensation for Plaintiffs.

VI. COLLECTIVE ACTION ALLEGATIONS

28. Plaintiffs are aware that Defendants' illegal policies or practices have been imposed upon Members of the Class. Like Plaintiffs, the Members of the Class work or worked for Defendants as stucco, plaster, and E.I.F.S. applicators and construction workers. The Members of

the Class perform or performed job duties similar to Plaintiffs, namely applying stucco, plaster, and E.I.F.S. and performing related construction work.

29. Defendants' applicators and construction workers perform or performed work for Defendants in multiple states.

30. As with Plaintiffs, Members of the Class are or were paid by Defendants weekly.

31. Upon information and belief, the Members of the Class are or were not paid by Defendants at a rate of one and one-half times their regular rates of pay for all or some of the hours they worked in excess of 40 hours in a week. The FLSA requires that hours over 40 worked in a week be compensated at the overtime rate of one and one-half times the regular rate of pay. Like Plaintiffs, Members of the Class should be paid their overtime rate for all hours worked over 40 hours in a week.

32. Defendants' failure to properly compensate Plaintiffs and Members of the Class results, upon information and belief, from generally applicable policies and/or practices. Specifically, upon information and belief, it is a policy and/or practice for Defendants not to pay their stucco, plaster, and E.I.F.S. applicators and construction workers overtime compensation at a rate of one and one-half their regular rates of pay for all or some of the hours worked in excess of 40 hours in a week.

33. As such, the Members of the Class are owed unpaid compensation for precisely the same reasons as the Plaintiffs.

34. Accordingly, the class of similarly situated plaintiffs is properly defined as:

All current and former stucco, plaster, and E.I.F.S. applicators and construction workers who were employed by ISSI and Frank during the three-year period preceding the filing of the

Original Complaint.

35. Members of the Class should be notified of this lawsuit and given the opportunity to opt-in if they so desire.

36. Notice from this Court should be expedited to protect these workers from losing a portion of their damages due to the running of the statute of limitations.

VII. CAUSES OF ACTION

37. The preceding paragraphs are incorporated by reference.

38. As set forth above, Defendants violated the FLSA with respect to Plaintiffs and Members of the Class by failing to pay them overtime compensation for all or some of the hours they worked in excess of 40 hours in a week. 29 U.S.C. §§ 206, 207.

39. Plaintiffs and Members of the Class are entitled to recover overtime compensation for all hours worked in excess of 40 hours in a week.

40. In addition, Plaintiffs and Members of the Class are entitled to liquidated damages in an amount equal to their unpaid wages.

41. In addition, Plaintiffs and Members of the Class are entitled to reasonable attorneys' fees and costs. 29 U.S.C. § 216 (b).

VIII. JURY DEMAND

42. Plaintiffs demands a jury trial.

PRAYER

WHEREFORE, Plaintiffs request that this Court award them and Members of the Class judgment against Defendants for:

1. damages for the full amount of their unpaid overtime compensation;
2. an amount equal to their unpaid overtime compensation as liquidated damages;

3. reasonable attorneys' fees, costs, and expenses of this action;
4. pre-judgment and post-judgment interest at the highest rate allowed by law; and
5. such other and further relief as may be allowed by law.

Respectfully submitted,

By: /s/ Zachary M. Bonner
Zachary M. Bonner (MS Bar. No. 103153)

OF COUNSEL:

MCCRANEY MONTAGNET QUIN & NOBLE, PLLC

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

1 : 17 - cv - 242 - HSO - JCG

I. (a) PLAINTIFFS

BOBBY WARRICK, JR. and VICTOR CRUZ, on behalf of themselves and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

McCraney Montagnet Quin Noble, 602 Steed Road, Suite 200 Ridgeland, Mississippi 39157 (601) 707-5725

DEFENDANTS

ISLANDER STUCCO SYSTEMS, INC. and FRANK C. ADAMS

County of Residence of First Listed Defendant Jackson Co., MS (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

Click here for: Nature of Suit Code Descriptions.

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

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

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

VI. CAUSE OF ACTION

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

29 U.S.C. sec. 201 et seq. Brief description of cause: FLSA Unpaid Wages and Overtime

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

09/06/2017 /s/ Zachary M. Bonner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$400 APPLYING IFP JUDGE MAG. JUDGE

EXHIBIT A

NOTICE OF CONSENT

I consent to be a party plaintiff in this action and, if necessary, a subsequent action, to recover any unpaid wages owed to me by:

ISLANDER STUCCO SYSTEMS, INC. and related entities

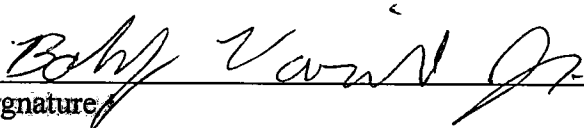
I consent to join the lawsuit in which this Notice of Consent is filed by Bailey Peavy Bailey Cowan Heckaman PLLC and/or any of its co-counsel (collectively "BPB") and on my behalf (the "Lawsuit").

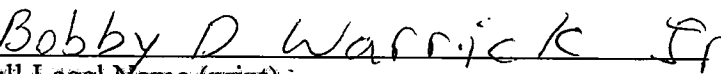
I performed the duties and was paid in the manner described in the active Complaint or Petition in this Lawsuit.

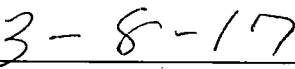
If I am not a named Plaintiff in this Lawsuit, then I authorize the named Plaintiff(s) and BPB to file and prosecute the Lawsuit on my behalf, and I designate the named Plaintiff(s) to make decisions on my behalf concerning the Lawsuit, including negotiating and deciding a resolution of my claims, and I understand that I may be bound by such decisions, subject to Court approval if required.

I agree to be represented by BPB in this Lawsuit. I agree to be bound by the Contract of Representation executed between the named Plaintiffs in this Lawsuit and BPB, subject to the additional terms stated in this Notice of Consent. I may obtain a copy of the executed Contract(s) of Representation by contacting BPB in writing.

In the event this Lawsuit is not certified or is decertified, I authorize BPB to reuse this Notice of Consent to re-file my claims in separate or related action(s) against the named Defendant(s) in this Lawsuit.


Signature


Full Legal Name (print)


Date

BAILEY PEAVY BAILEY COWAN HECKAMAN PLLC
440 Louisiana Street, Suite 2100, Houston, Texas 77002
overtime@bpblaw.com • 1-866-713-8300

EXHIBIT B

NOTICE OF CONSENT

I consent to be a party plaintiff in this action and, if necessary, a subsequent action, to recover any unpaid wages owed to me by:

Islander Stucco Systems and related Entities

I consent to join the lawsuit in which this Notice of Consent is filed by Bailey Peavy Bailey Cowan Heckaman PLLC and/or any of its co-counsel (collectively "BPB") and on my behalf (the "Lawsuit").

I performed the duties and was paid in the manner described in the active Complaint or Petition in this Lawsuit.

If I am not a named Plaintiff in this Lawsuit, then I authorize the named Plaintiff(s) and BPB to file and prosecute the Lawsuit on my behalf, and I designate the named Plaintiff(s) to make decisions on my behalf concerning the Lawsuit, including negotiating and deciding a resolution of my claims, and I understand that I may be bound by such decisions, subject to Court approval if required.

I agree to be represented by BPB in this Lawsuit. I agree to be bound by the Contract of Representation executed between the named Plaintiffs in this Lawsuit and BPB, subject to the additional terms stated in this Notice of Consent. I may obtain a copy of the executed Contract(s) of Representation by contacting BPB in writing.

In the event this Lawsuit is not certified or is decertified, I authorize BPB to reuse this Notice of Consent to re-file my claims in separate or related action(s) against the named Defendant(s) in this Lawsuit.

Victor L. Cruz
Signature

Victor L. Cruz
Full Legal Name (print)

June 7, 2017
Date

BAILEY PEAVY BAILEY COWAN HECKAMAN PLLC
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Islander Stucco Systems Plastered with Former Employees' Class Action](#)
