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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

**ANDREW SPICIARICH; JOEL O'NEIL; and
IAN ANDERSON, individually and on behalf of
all others similarly situated,**

Plaintiffs,

-against-

**THE GORMAN GROUP, LLC; GORMAN
BROS., INC.; ALBERT MARK GORMAN,
individually; and PAUL ANTHONY
GORMAN, individually;**

Defendants.

No: 1:20-cv-646 (FJS/CFH)

**CLASS ACTION
COMPLAINT**

Andrew Spiciarich, Joel' O'Neil, Ian Anderson ("Plaintiffs"), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves, and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation, agreed upon wages, and other damages for Plaintiffs and similarly situated foremen, chippers, operators, and all similarly situated hourly workers (collectively "Hourly Workers") who work or have worked for The Gorman Group located at 200 Church Street, Albany, New York 12202.

2. Owned and operated by The Gorman Group, LLC, Gorman Bros., Inc., Albert Mark Gorman, and Paul Anthony Gorman (collectively, "The Gorman Group" or "Defendants"), The Gorman Group provides asphalt road engineering to municipalities throughout the Northeast.

3. Defendants organize their work force into “crews” of Hourly Workers who travel from their residences to a “shop” or meet up location to perform work preparing their machine and vehicles for the day. This includes loading and organizing equipment and materials onto vehicles.

4. Hourly Workers then depart with their crew via company vehicle to their assigned job site, which is generally a 1.5 to 2-hour drive from their shop location.

5. Upon finishing their work at their assigned job site, Hourly Workers head back to their shop location to reequip and organize vehicles in preparation for the next day.

6. Despite these schedule hours, Defendants have instituted a policy and practice in which the hours Hourly Workers travel from the shop site the work site are not counted towards hours worked.

7. Despite having knowledge that Hourly Worker regularly travel between these assigned work sites, Defendants do not pay Hourly Workers any compensation for this additional compensable time.

8. Defendants at all times have compensated Plaintiffs and other Hourly Workers on an hourly rate basis.

9. Despite being non-exempt employees, Defendants have failed to properly pay Plaintiffs and other Hourly Workers overtime compensation at 1.5 times their regular rate of pay when they work over 40 hours per workweek. Specifically, Defendants failed to add together all compensable time, including time worked traveling between jobsites, for the purposes of overtime compensation.

10. Plaintiffs bring this action on behalf of themselves and all other similarly situated Hourly Workers who elect to opt in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. §

216(b).

11. Plaintiffs also bring this action on behalf of themselves and all other similarly situated Hourly Workers in New York pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy violations of the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

THE PARTIES

Plaintiff

Andrew Spiciarich

12. Andrew Spiciarich (“Spiciarich”) is an adult individual who is a resident of New York.

13. Spiciarich has been employed by Defendants as an Hourly Worker since May 2014.

14. Spiciarich is a covered employee within the meaning of the FLSA and the NYLL.

15. A written consent form for Spiciarich is being filed with this Class Action Complaint.

Joel O’Neil

16. Joel O’Neil (“O’Neil”) is an adult individual who is a resident of New York.

17. O’Neil was employed by Defendants as an Hourly Worker from approximately May 2001 through March 2019.

18. O’Neil is a covered employee within the meaning of the FLSA and the NYLL.

19. A written consent form for O’Neil is being filed with this Class Action Complaint.

Ian Anderson

20. Ian Anderson (“Anderson”) is an adult individual who is a resident of New York.

21. Anderson was employed by Defendants as an Hourly Worker from approximately July 7, 2017 through October 1, 2019.

22. Anderson is a covered employee within the meaning of the FLSA and the NYLL.

23. A written consent form for Anderson is being filed with this Class Action Complaint.

Defendants

24. Defendants jointly employed Plaintiffs and similarly situated employees at all times relevant.

25. Each Defendant has had substantial control over Plaintiffs' and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.

26. During all relevant times, Defendants have been Plaintiffs' employers within the meaning of the FLSA and the NYLL.

The Gorman Group, LLC

27. The Gorman Group, LLC is a domestic for-profit corporation organized and existing under the laws of New York.

28. The Gorman Group, LLC is a covered employer within the meaning of the FLSA and the NYLL, and at all times relevant, employed Plaintiffs and similarly situated employees.

29. At all times relevant, The Gorman Group, LLC has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

30. The Gorman Group, LLC applies the same employment policies, practices, and procedures to all Hourly Workers in its operation, including policies, practices, and procedures with respect to payment of overtime compensation.

31. Upon information and belief, at all relevant times, The Gorman Group, LLC has had an annual gross volume of sales in excess of \$500,000.

Gorman Bros., Inc.

32. Gorman Bros., Inc. is a domestic for-profit corporation organized and existing under the laws of New York.

33. According to their filing on the New York Department of State's website, Gorman Bros., Inc.'s principal executive office is located at 200 Church Street, Albany, New York 12202.

34. Gorman Bros., Inc. is the entity that appears on the paystubs received by Plaintiffs for work performed for Defendants.

35. Gorman Bros., Inc. is a covered employer within the meaning of the FLSA and the NYLL, and at all times relevant, employed Plaintiffs and similarly situated employees.

36. At all times relevant, Gorman Bros., Inc. has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

37. Gorman Bros., Inc. applies the same employment policies, practices, and procedures to all Hourly Workers in its operation, including policies, practices, and procedures with respect to payment of overtime compensation.

38. Upon information and belief, at all relevant times, Gorman Bros., Inc. has had an annual gross volume of sales in excess of \$500,000.

Albert Mark Gorman

39. At all relevant times herein, Albert Mark Gorman ("Mark Gorman") has owned and/or operated The Gorman Group, LLC and Gorman Bros., Inc.

40. Upon information and belief, Mark Gorman is a resident of the State of New York.

41. According to the New York Secretary of State – Division of Corporations, Mark Gorman is identified as the "Chief Executive Officer" for Gorman Bros., Inc.

42. Mark Gorman maintains a direct and significant management role in The Gorman Group, LLC and Gorman Bros. Inc.

43. According to media sources, Mark Gorman has been running The Gorman Group for over thirty years.¹

44. Mark Gorman has been recognized by the New York State Senate as a leader and owner of The Gorman Group.²

45. Mark Gorman is mentioned on The Gorman Group's website as carrying on the legacy of the family owned business.³

46. Mark Gorman maintains a direct and significant management role in The Gorman Group. In this regard, Spiciarich, O'Neil, and Anderson all identify Mark Gorman as a manager who frequently directs their work.

47. At all relevant times, Mark Gorman has had the power over payroll decisions at The Gorman Group, including the power to retain time and/or wage records.

48. At all relevant times, Mark Gorman has been actively involved in managing the day to day operations of The Gorman Group.

49. At all relevant times, Mark Gorman has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees at The Gorman Group.

50. At all relevant times, Mark Gorman has had the power to transfer the assets and/or liabilities of the Gorman Group.

51. At all relevant times, Mark Gorman has had the power the declare bankruptcy on behalf of the Gorman Group.

¹ See <https://www.constructionequipmentguide.com/the-gorman-group-one-hundred-years-and-counting/35941>.

² See N.Y. Senate Resolution No. 488 (2017).

³ See <http://www.gormanroads.com>.

52. At all relevant times, Mark Gorman has had the power to enter into contracts on behalf of the Gorman Group.

53. At all relevant times, Mark Gorman has had the power to close, shut down, and/or sell the Gorman Group.

54. Mark Gorman is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, has employed and/or jointly employed Plaintiffs and similarly situated employees.

Paul Anthony Gorman

55. At all relevant times herein, Paul Anthony Gorman (“Tony Gorman”) has owned and/or operated The Gorman Group, LLC and Gorman Bros., Inc.

56. Upon information and belief, Tony Gorman is a resident of the State of New York.

57. Tony Gorman maintains a direct and significant management role in The Gorman Group, LLC and Gorman Bros. Inc.

58. According to media sources, Tony Gorman has been running The Gorman Group for over thirty years.⁴

59. Tony Gorman has been recognized by the New York State Senate as a leader and owner of The Gorman Group.⁵

60. Tony Gorman is mentioned on The Gorman Group’s website as carrying on the legacy of the family owned business.⁶

61. Tony Gorman maintains a direct and significant management role in The Gorman Group. In this regard, Spiciarich, O’Neil, and Anderson all identify Tony Gorman as a manager

⁴ See <https://www.constructionequipmentguide.com/the-gorman-group-one-hundred-years-and-counting/35941>.

⁵ See N.Y. Senate Resolution No. 488 (2017).

⁶ See <http://www.gormanroads.com>.

who frequently directs their work.

62. At all relevant times, Tony Gorman has had the power over payroll decisions at The Gorman Group, including the power to retain time and/or wage records.

63. At all relevant times, Tony Gorman has been actively involved in managing the day to day operations of The Gorman Group.

64. At all relevant times, Tony Gorman has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees at The Gorman Group.

65. At all relevant times, Tony Gorman has had the power to transfer the assets and/or liabilities of the Gorman Group.

66. At all relevant times, Tony Gorman has had the power the declare bankruptcy on behalf of the Gorman Group.

67. At all relevant times, Tony Gorman has had the power to enter into contracts on behalf of the Gorman Group.

68. At all relevant times, Tony Gorman has had the power to close, shut down, and/or sell the Gorman Group.

69. Tony Gorman is a covered employer within the meaning of the FLSA and the NYLL, and at all relevant times, has employed and/or jointly employed Plaintiffs and similarly situated employees.

JURISDICTION AND VENUE

70. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

71. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

72. Venue is proper in the Northern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District and Defendants conduct business in this District.

COLLECTIVE ACTION ALLEGATIONS

73. Plaintiffs bring the First Cause of Action, an FLSA claim, on behalf of themselves and all similarly situated persons who work or have worked as Hourly Workers for The Gorman Group who elect to opt-in to this action (the “FLSA Collective”).

74. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the FLSA Collective.

75. Consistent with Defendants’ policies and patterns or practices, Plaintiffs and the FLSA Collective were not paid the proper premium overtime compensation of 1.5 times their regular rates of pay for all hours worked beyond 40 per workweek.

76. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

77. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to, willfully failing to pay their employees, including Plaintiffs and the FLSA Collective, proper premium overtime wages for all hours worked in excess of 40 hours per workweek.

CLASS ACTION ALLEGATIONS

78. Plaintiffs bring the Second, Third, Fourth, and Fifth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of

persons consisting of:

All persons who work or have worked as Hourly Workers for The Gorman Group in New York between June 9, 2014 and the date of final judgment in this matter (the “Rule 23 Class”).

79. The Rule 23 Class Members are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

80. There are more than fifty Rule 23 Class Members.

81. Plaintiffs’ claims are typical of those claims that could be alleged by any Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class Member in separate actions.

82. Plaintiffs and the Rule 23 Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants’ common policies, practices, and patterns of conduct. Defendants’ corporate-wide policies and practices affected all Rule 23 Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

83. Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class Members and have no interests antagonistic to the Rule 23 Class Members.

84. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation, and have previously represented many plaintiffs and classes in wage and hour cases.

85. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. 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.

86. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiffs and the Rule 23 Class Members individually and include, but are not limited to, the following:

- (a) whether Defendants failed to compensate Plaintiffs and the Rule 23 Class for all hours worked at their regular rate(s) of pay;
- (b) whether Defendants correctly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 per workweek;
- (c) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with proper time of hire wage notices, as required by the NYLL.
- (d) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with accurate statements with every payment of wages, as required by the NYLL.

PLAINTIFF'S FACTUAL ALLEGATIONS

87. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiffs, individually, as follows:

Andrew Spiciarich

88. Spiciarich has been employed by Defendants as a "Foreman" and "Chipper" from approximately May 2014 through the present date.

89. At all times relevant, Defendant paid Spiciarich on an hourly basis.

90. At all times relevant, Spiciarich has been a non-exempt employee under the FLSA and NYLL.

91. During his employment, Spiciarich generally worked between 45 to 60 hours per week, unless he missed time for vacation, sick days or holidays. On average, he generally was

assigned a schedule of 5 days per week.

92. In general, Spiciarich would travel to his shop location and spend approximately 30 minutes fueling up a work vehicle and organizing equipment onto the vehicle. Spiciarich would then drive the vehicle to his assigned worksite. On average, Spiciarich drove between 1.5 to 2 hours to his assigned worksite.

93. After completing his assigned duties at his worksite, Spiciarich would generally drive between 1.5 to 2 hours back to the shop location. Upon arriving at the shop Spiciarich would usually work 30 minutes to 1 hour loading up vehicles with raw paving materials for the next day of work.

94. Defendants would pay Spiciarich for his time working in the shop at the beginning and end of the workday, and would pay Spiciarich for his time working at his assigned jobsite. Therefore, Defendants were aware that Spiciarich was traveling between the shop and his assigned worksite, however Defendants did not account for this travel time when compensating Spiciarich.

95. Despite regularly working over 40 hours per workweek, Defendants failed to correctly compensate Spiciarich with proper overtime compensation of 1.5 times his regular rate of pay for all hours he was suffered or permitted to work.

96. Defendants did not compensate Spiciarich for time he spent traveling between the shop and his assigned worksites.

97. Upon information and belief, Defendants did not provide Spiciarich with a time of hire notice as required by the NYLL.

98. Throughout his employment, Spiciarich received weekly pay stubs from Defendants that did not properly record and/or compensate him for all of the hours that he worked.

99. In this regard, Defendants failed to provide Spiciarich with accurate wage statements

as required by the NYLL.

Joel O'Neil

100. O'Neil was been employed by Defendants as a "Foreman" and "Operator" from approximately May 2001 through March 2019.

101. At all times relevant, Defendant paid O'Neil on an hourly basis.

102. At all times relevant, O'Neil has been a non-exempt employee under the FLSA and NYLL.

103. During his employment, O'Neil generally worked between 50 to 60 hours per week, unless he missed time for vacation, sick days or holidays. On average, he generally was assigned a schedule of 5 days per week.

104. In general, O'Neil would travel to his shop location and spend approximately 1 hour fueling up a work vehicle and organizing equipment onto the vehicle. O'Neil would then drive the vehicle to his assigned worksite. On average, O'Neil drove 2 hours to his assigned worksite.

105. After completing his assigned duties at his worksite, O'Neil would generally drive 2 hours back to the shop location. Upon arriving at the shop O'Neil would usually work 30 minutes to 1 hour loading up vehicles with fiberglass for the next day of work.

106. Defendants would pay O'Neil for his time working in the shop at the beginning and end of the workday, and would pay O'Neil for his time working at his assigned jobsite. Therefore, Defendants were aware that O'Neil was traveling between the shop and his assigned worksite, however, Defendants did not account for this traveling time when compensating O'Neil.

107. Despite regularly working over 40 hours per workweek, Defendants failed to correctly compensate O'Neil with proper overtime compensation of 1.5 times his regular rate of

pay for all hours he was suffered or permitted to work.

108. Defendants did not compensate O'Neil for time the spent traveling between the shop and his assigned worksites.

109. Throughout his employment, O'Neil received weekly pay stubs from Defendants that did not properly record and/or compensate him for all of the hours that he worked.

110. In this regard, Defendants failed to provide O'Neil with accurate wage statements as required by the NYLL.

Ian Anderson

111. Anderson was been employed by Defendants as an "Operator" from approximately July 2017 through October 2019.

112. At all times relevant, Defendant paid Anderson on an hourly basis.

113. At all times relevant, Anderson has been a non-exempt employee under the FLSA and NYLL.

114. During his employment, Anderson generally worked between 45 to 60 hours per week, unless he missed time for vacation, sick days or holidays. On average, he generally was assigned a schedule of 5 days per week.

115. In general, Anderson would travel to his shop location and spend approximately 30 minutes fueling up a work vehicle and organizing equipment onto the vehicle. Anderson would then drive the vehicle to his assigned worksite. On average, Anderson drove between 1.5 to 2 hours to his assigned worksite.

116. After completing his assigned duties at his worksite, Anderson would generally drive between 1.5 to 2 hours back to the shop location. Upon arriving at the shop Anderson would usually work 30 minutes to 1 hours loading up vehicles with raw paving materials for the next day

of work.

117. Defendants would pay Anderson for his time working in the shop at the beginning and end of the workday, and would pay Anderson for his time working at his assigned jobsite. Therefore, Defendants were aware that Anderson was traveling between the shop and his assigned worksite, however Defendants did not account for this traveling time when compensating Anderson.

118. Despite regularly working over 40 hours per workweek, Defendants failed to correctly compensate Anderson with proper overtime compensation of 1.5 times his regular rate of pay for all hours he was suffered or permitted to work.

119. Defendants did not compensate Anderson for the time he spent traveling between the shop and his assigned worksites.

120. Upon information and belief, Defendants did not provide Anderson with a time of hire notice as required by the NYLL.

121. Throughout his employment, Anderson received weekly pay stubs from Defendants that did not properly record and/or compensate him for all of the hours that he worked.

122. In this regard, Defendants failed to provide Anderson with accurate wage statements as required by the NYLL.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

123. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

124. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiffs and the FLSA

Collective.

125. Plaintiffs and the FLSA Collective worked in excess of 40 hours during workweeks in the relevant period.

126. Defendants failed to pay Plaintiffs and the FLSA Collective the premium overtime wages to which they were entitled under the FLSA – at a rate of 1.5 times their regular rate of pay for all hours worked in excess of 40 per workweek.

127. As a result of Defendants’ willful violations of the FLSA, Plaintiffs and the FLSA Collective have suffered damages by being denied overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys’ fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
New York Labor Law – Failure to Pay Agreed Upon Wages
(Brought on behalf of Plaintiffs and the Rule 23 Class)

128. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

129. The wage provisions of Article 6 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiffs and the Rule 23 Class.

130. Pursuant to NYLL, Article 6 § 191(1)(d), Defendants are required to pay Plaintiffs and the Rule 23 Class the wages they have earned in accordance with the agreed terms of their employment, but not less frequently than semi-monthly, on regular pay days designated in advance by Defendants.

131. Defendants have failed to pay Plaintiffs and the Rule 23 Class the earned wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations, pursuant to the agreed-upon terms of Plaintiffs’ employment.

132. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their agreed-upon earned wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
New York Labor Law – Overtime Wages
(Brought on behalf of Plaintiffs and the Rule 23 Class)

133. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

134. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants, and protect Plaintiffs and the Rule 23 Class.

135. Defendants failed to pay Plaintiffs and the Rule 23 Class the premium overtime wages to which they were entitled under the NYLL and the supporting New York State Department of Labor Regulations – at a rate of 1.5 times their regular rate of pay – for all hours worked beyond 40 per workweek.

136. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest.

FOURTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Proper Annual Wage Notices
(Brought on behalf of Spiciarich, Anderson, and the New York Class)

137. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

138. Defendants have failed to supply Spiciarich, Anderson, and the New York Class

with a proper time of hire annual wage notice, as required by NYLL, Article 6, § 195(1), in English or in the language identified as their primary language, at the time of hiring, containing, among other items: 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; the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article; overtime rate; the name of the employer; any “doing business as” names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

139. Due to Defendants’ violations of NYLL, Article 6, § 195(1), Spiciarich, Anderson, and the New York Class are entitled to statutory penalties of fifty dollars for each workday that Defendants failed to provide them with wage notices, or a total of five thousand dollars each, as well as reasonable attorneys’ fees and costs as provided for by NYLL, Article 6, § 198(1-b).

FIFTH CAUSE OF ACTION
New York Labor Law – Failure to Provide Accurate Wage Statements
(Brought on behalf of Plaintiffs and the Rule 23 Class)

140. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

141. Defendants failed to supply Plaintiffs and the Rule 23 Class with an accurate statement of wages with every payment of wages as required by NYLL, Article 6, § 195(3), listing: 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; hourly rate or rates of pay and overtime rate or rates of pay

if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

142. Due to Defendants' violations of NYLL, Article 6, § 195(3), Plaintiffs and the Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide them with accurate wage statements, or a total of five thousand dollars, and reasonable attorneys' fees and costs as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually, and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all Hourly Workers who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked for the Gorman Group. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime wages, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiffs as representatives of the Rule 23 Class and counsel of record as Class Counsel;

E. Unpaid overtime wages, unlawful deductions of wages, liquidated damages

permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

F. Statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, as provided for by NYLL, Article 6 § 198;

G. Prejudgment and post-judgment interest;

H. Reasonable attorneys' fees and costs of the action; and

I. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
June 9, 2020

Respectfully submitted,

A handwritten signature in cursive script, reading "Brian Schaffer", written in black ink on a white background.

Brian S. Schaffer

FITAPELLI & SCHAFFER, LLP


Brian S. Schaffer
Hunter G Benharris
28 Liberty Street, 30th Floor
New York, NY 10005
Telephone: (212) 300-0375

Attorneys for Plaintiffs and the Putative Class

FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against Gorman Bros., Inc. and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

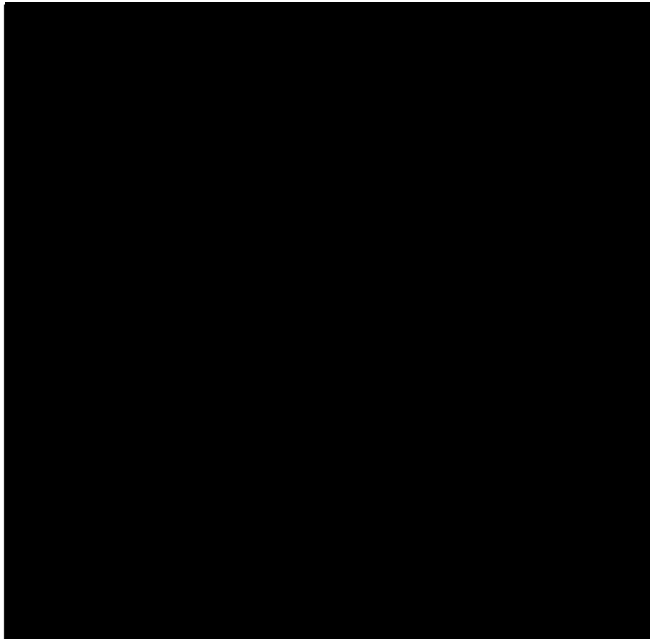
2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP ("the Firm") to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney's fees from any settlement or judgment in the amount of the greater of: (1) the "lodestar" amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.


Andrew spiciarich (Jan 26, 2020)

Signature

Andrew spiciarich

Full Legal Name (Print)



FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against Gorman Bros Inc. and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP (“the Firm”) to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney’s fees from any settlement or judgment in the amount of the greater of: (1) the “lodestar” amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.

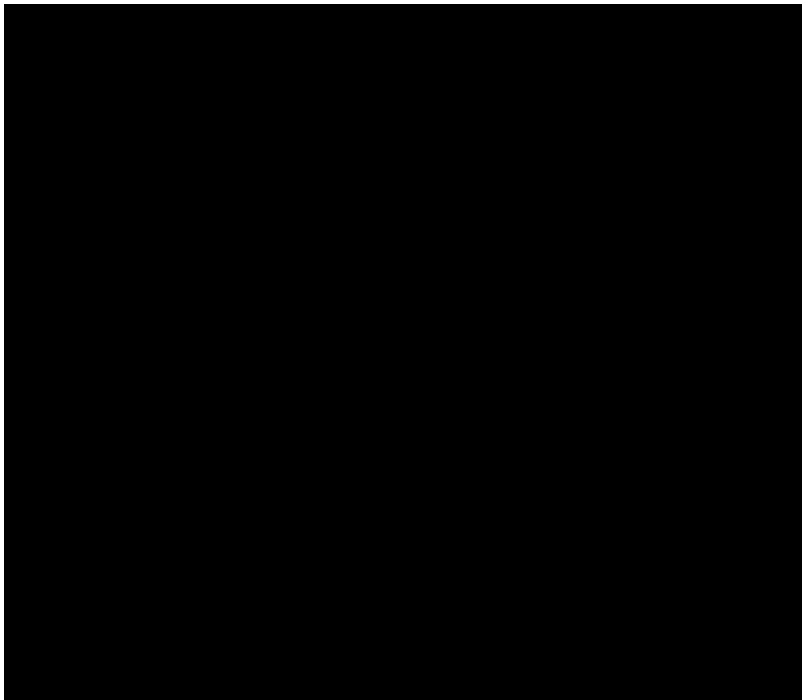
Joel O'Neil

Joel O'Neil (Feb 11, 2020)

Signature

Joel O'Neil

Full Legal Name (Print)



FAIR LABOR STANDARDS ACT CONSENT

1. I consent to be a party plaintiff in a lawsuit against Gorman Bros Inc. and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

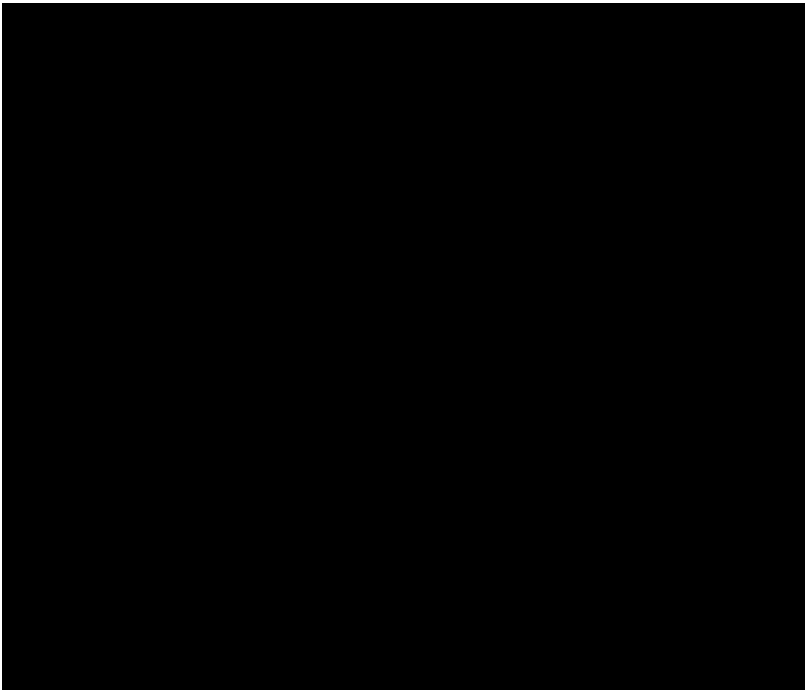
2. By signing and returning this consent form, I hereby designate FITAPELLI & SCHAFFER, LLP (“the Firm”) to represent me and make decisions on my behalf concerning the litigation and any settlement. I understand that reasonable costs expended on my behalf will be deducted from any settlement or judgment amount on a pro rata basis among all other plaintiffs. I understand that the Firm will petition the Court for attorney’s fees from any settlement or judgment in the amount of the greater of: (1) the “lodestar” amount, calculated by multiplying reasonable hourly rates by the number of hours expended on the lawsuit, or (2) 1/3 of the gross settlement or judgment amount. I agree to be bound by any adjudication of this action by a court, whether it is favorable or unfavorable.


Ian Anderson (Mar 27, 2020)

Signature

Ian Anderson

Full Legal Name (Print)



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

ANDREW SPICIARICH; JOEL O'NEIL; and IAN ANDERSON,
individually and on behalf of all others similarly situated,

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

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

Fitapelli & Schaffer, LLP Tel: (212) 300-0375
28 Liberty Street, 30th Floor, New York, NY 10005

DEFENDANTS

THE GORMAN GROUP, LLC; GORMAN BROS., INC.; ALBERT
MARK GORMAN, individually; and PAUL ANTHONY GORMAN,
individually

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

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☒ 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 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 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 (1395ff) <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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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):
Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Brief description of cause:
Failure to Pay Wages

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/09/2020

SIGNATURE OF ATTORNEY OF RECORD

Brain Schaffer

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$400.00

APPLYING IFP

JUDGE

FJS

MAG. JUDGE

CFH

ANYNDC-5138806

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.