

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**LOUIE DESCHAMPS, and all others
similarly situated under 29 USC § 216(b),**

Plaintiff,

v.

**NOVA HARDBANDING, LLC, and KEN
BROMLEY, individually,**

Defendants.

Civil Action No. 2:17-cv-00493-GBW-SMV

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

STIPULATION AND ORDER REGARDING NOTICE TO POTENTIAL PLAINTIFFS

Plaintiff, on behalf of himself and all others similarly situated, and the above-named Defendants (“Defendants”) (collectively, the “Parties”) hereby file this Stipulation and Proposed Order Regarding Notice to Potential Plaintiffs (“Stipulation”) and request Court approval of the Stipulation by signing below in the space provided.

To preserve resources and in the interest of judicial economy, the Parties have reached an agreement that this case should be and, by this Stipulation when signed by the Court, is conditionally certified as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 216(b). The Parties stipulate that the Notice and Consent Form (“Consent”) (attached hereto as Exhibits A and B, respectively) are timely, informative, and accurate. The Parties agree to use this form as the exclusive means to inform the Class Members of their right to opt into this lawsuit. Nothing in this Stipulation or in the Notice and/or Consent shall be interpreted as limiting, waiving, or modifying any of the Parties’ claims and/or defenses. Despite this stipulation, Defendants continue to deny that they have violated the FLSA in any respect.

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Defendants are ordered to produce the names, last known email addresses, phone numbers and addresses (collectively, “Employee Information”) of the following Class Members:

All field personnel paid on a salary or salary plus bonus basis whose primary duties involved the performance of technical or manual labor to provide Defendants’ services at job sites employed by Defendants over the previous three years.¹

Defendants shall provide the Employee Information in an electronic form that can be used by Plaintiff in mailing out the Court-approved Notice. If the information is not stored electronically, Defendants shall provide it in written form. The Employee Information must be provided within seven days of the entry of this Stipulation and Order. If Defendants fail to provide the Employee Information within seven days of the date this Order is signed, the statute of limitations is tolled for each day after the seventh day that Defendants fail to provide the Employee Information.

The Court authorizes that the “Notice” (Exhibit A) may immediately issued to the Class Members in accordance with the below-provided procedure. Plaintiff shall enclose the “Consent Form” (Exhibit B) with a self-addressed, postage paid return envelope for U.S. postal mailing. The Notice and Consent Forms shall be sent by first class mail, overnight delivery or electronically at Plaintiff’s attorney’s cost. Plaintiff may send the Notice electronically by utilizing the following language by text message and email: “Nova Mud records show that you provided services to Nova Mud and may be eligible to join this lawsuit. Click below for more information.” The text and email messages shall contain a link to electronic versions of the Notice and Consent Form. The Potential Plaintiffs shall be provided forty-five (45) days after the date the Notice and Consent are initially mailed to file a Consent form opting-in to this litigation. A Consent postmarked on the deadline is considered timely. Consents received by mail without postmarks shall be considered timely if received within four (4) business days of the deadline. Plaintiff shall provide the Court and

¹ This definition specifically includes, but is not limited to, Defendants’ drill pipe inspectors, hardbanders, hardbander operators, inspection helpers, inspectors, inspector helpers, or other job titles that perform similar duties as the proposed class.

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opposing counsel with a notice indicating the date on which the Notice forms were initially mailed so the Court and the Parties are advised of the beginning of the opt-in period.

Plaintiffs' counsel shall date stamp the returned consents on the day they are received in counsel's office and retain any envelope or other evidence showing the date the Consent Form was postmarked, fax-stamped, or received. Within 10 days after the close of the Opt-In Period, Plaintiff's counsel will file the consent forms for the Opt-In Plaintiffs, noting the received date for each individual on the Notice of Filing. The received date will constitute the date the consents forms will be considered filed with the Court for statute of limitations purposes.

Signed this 27th day of July, 2017.



UNITED STATES MAGISTRATE JUDGE

AGREED AS TO FORM AND SUBSTANCE:

/s/ Jack Siegel

J. DEREK BRAZIEL
Texas Bar No. 00793380
J. FORESTER
Texas Bar No. 24087532
LEE & BRAZIEL, L.L.P.
1801 N. Lamar St. Suite 325
Dallas, Texas 75202
(214) 749-1400 phone
(214) 749-1010 fax
www.overtimelayer.com

ORDER REGARDING NOTICE TO POTENTIAL PLAINTIFFS

JACK SIEGEL

JACK@SIEGELLAGROUP.BIZ

Co-Attorney in Charge

Texas Bar No. 24070621

SIEGEL LAW GROUP PLLC

2820 McKinnon, Suite 5009

Dallas, Texas 75201

P: (214) 749-1400

www.siegellawgroup.biz

ATTORNEYS FOR PLAINTIFFS

BUSTOS LAW FIRM, P.C.

/s/ Fernando M. Bustos

FERNANDO M. BUSTOS

E-mail: fbustos@bustoslawfirm.com

MATTHEW N. ZIMMERMAN

Email: mzimmerman@bustoslawfirm.com

1001 Main Street, Suite 501

Lubbock, Texas 79401

Phone: (806) 780-3976

Facsimile: (806) 780-3800

COUNSEL FOR DEFENDANTS

ATTORNEYS FOR DEFENDANTS

Why Am I Getting This Notice?

You have been identified as an individual who worked for Nova Hardbanding, LLC. (“**Nova**”) who received pay:

- On a salary basis or salary plus bonus basis with no overtime pay for working over 40 hours per week

between _____ and today. If you have received this Notice, this lawsuit may affect you.

What’s is The Lawsuit About?

A former **Nova** employee filed a state and federal overtime lawsuit seeking unpaid overtime pay for working over 40 hours per week. The lawsuit claims that **Nova** failed to pay him and other employees overtime for all overtime hours worked during their employment. Specifically, the lawsuit claims that **Nova**:

- Misclassified field personnel as exempt from overtime and paid them on a salary basis; and
- Failed to pay them overtime for all overtime hours worked (hours worked over 40 per week).

Nova denies the allegations. Nova recently settled claims with the United States Department of Labor (“DOL”) that alleged overtime violations that resulted in Nova sending settlement checks to current and former Nova employees that Nova and the DOL agreed were entitled to overtime pay for overtime work performed between April 22, 2013 and April 21, 2015.

The receipt or acceptance of the settlement check does not prevent you from participating in this case. However, cashing a settlement check may result in a waiver of your federal overtime claims (but not state law claims) exclusively for the following time period:

April 22, 2013 to April 21, 2015

Am I eligible?

You are eligible to join this case to pursue unpaid overtime pay if:

- You worked for Nova performing work at job sites;
- Worked over 40 hours in at least one week; &
- Received a salary or salary-plus-bonus, but no overtime pay

at any time between _____ and the present.

You have a choice to assert your legal rights in this case if you desire to do so. If you do not do so, you will not share in any money awarded in the case.

What Are My Choices?

If you join this lawsuit, you will be bound by the case’s result—whether favorable or unfavorable. If you join the case, you will not have to pay the lawyers anything out of pocket, win or lose.

If you do not join this lawsuit as a plaintiff, you are free to take action on your own or do nothing.

What Can I Get?

If the workers win, you may get an amount up to two times the unpaid wages you should have received plus attorneys’ fees and costs.

If nothing is recovered in the case, you will get nothing and court costs (but not attorneys’ fees) may possibly be assessed against you.

Can I be Fired or Retaliated Against?

It is unlawful for **Nova**, or your current employer to terminate or take any adverse action, as defined by the law, as a result of your participation in this suit.

How Do I Join the Lawsuit?

If you want to participate in the lawsuit, fill out the enclosed *Consent to Join* form and mail or fax it back. It must be mailed and received by **[TBA]**.

Can I Get More Information?

To learn more, call the workers’ attorneys toll free at 866-949-1400. There is no charge for the consultation and the call is confidential.

Or write or email:

Lee & Braziel, LLP

Nova Hardbanding Unpaid Overtime Claims

1801 N. Lamar St., Suite 325

Dallas, TX 75202

info@l-b-law.com

www.overtimelawyer.com

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NOTICE OF CONSENT TO BE A PARTY PLAINTIFF

Fair Labor Standards Act of 1938, 29 U.S.C. 216(b)

I hereby consent to be a party plaintiff seeking unpaid wages and overtime pay in the case in which this consent is filed. By joining this lawsuit, I designate the named plaintiff(s) in which this consent is filed, and his/her attorneys (and other persons those individuals designate as necessary) as my representatives to make all decisions on my behalf, to the extent permitted by law, concerning the method and manner of conducting the case including settlement, the entering of an agreement with Plaintiff's counsel regarding payment of attorneys' fees and court costs, and all other matters pertaining to this lawsuit. I further acknowledge that I intend for this consent to be filed in order to recover overtime wages against my current/former employer whether in this action or in any subsequent action that may be filed on my behalf for such recovery, and this consent may be used in this case or in any subsequent case as necessary. For purposes of pursuing my unpaid wage and overtime claims I choose to be represented by Lee & Braziel, LLP, the Siegel Law Group PLLC, and other attorneys with whom they may associate.

Date: _____

Signature: _____

Printed Name: _____

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:
This information will NOT be made part of any public record and is necessary for your attorney's files for litigation and possible settlement purposes.

Name: _____

Any other Name(s) used or known by:

Dates of Employment with Company: Beg: _____

End: _____

Estimated Monthly Compensation: _____

Your Mailing Address: _____

City, State & Zip Code: _____

Social Security No. (last 4 digits ok): _____

Daytime Telephone: _____

Evening Telephone: _____

Cellular Telephone: _____

E-Mail Address: _____

Return this form to: Nova Hardbanding Overtime Lawsuit
Lee & Braziel, LLP
1801 N. Lamar St., Suite 325
Dallas, Texas 75202
Facsimile: 214-749-1010
Phone: 214-749-1400
info@l-b-law.com