

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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RASHID MUNIR, WAQAR U.R. REHMAN, :
SALMAN HAQ, TAHIR M. KHAN, :
MOHAMMED N. MALIK and MOHAMMED :
A. CHATTHA, on behalf of themselves and on :
behalf of all other similarly situated persons, :
:

Plaintiffs, :

v. :

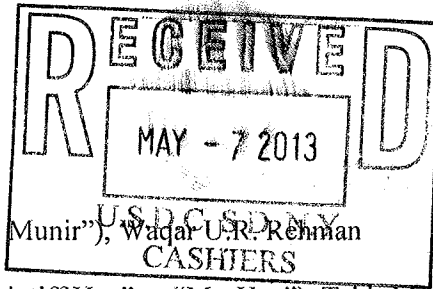
SUNNY'S LIMOUSINE SERVICE, INC. and :
SHAFQAT CHAUDHRY, :
:

Defendants. :
-----X

Civil Action No. 13-cv-1581 (PKC)

AMENDED COMPLAINT

Jury Trial Demanded



Plaintiffs Rashid Munir (“Plaintiff Munir” or “Mr. Munir”), Waqar U.R. Rehman (“Plaintiff Rehman” or “Mr. Rehman”), Salman Haq (“Plaintiff Haq” or “Mr. Haq”), Tahir M. Khan (“Plaintiff Khan” or “Mr. Khan”), Mohammed N. Malik (“Plaintiff Malik” or “Mr. Malik”) and Mohammed A. Chattha (“Plaintiff Chattha” or “Mr. Chattha”) (together, “Plaintiffs”), on behalf of themselves and on behalf of all other similarly situated persons, by and through counsel, Thompson Wigdor LLP, as and for the Amended Complaint in this action against Defendants Sunny’s Limousine Service Inc. (“SLS”) and Shafqat Chaudhry (collectively “Defendants”), hereby allege as follows:

NATURE OF THE CLAIMS

1. Plaintiffs bring this action, on behalf of themselves and on behalf of all other similarly situated persons, to recover (a) overtime and minimum wages which Defendants failed to pay in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et seq.*, and the New York Labor Law (“NYLL”), §650 *et seq.*; (b) wages earned in accordance with the agreed terms of employment which Defendants failed to pay in violation of NYLL §191 *et seq.*; (c)

unlawful wages deductions in violation of NYLL §193 *et seq*; and (d) unlawfully retained gratuities and “charges purported to be gratuities” in violation of NYLL § 196-d.

2. Plaintiffs’ claims under the FLSA are brought as a collective action, pursuant to 29 U.S.C. §216(b), on behalf of themselves and on behalf of all other similarly-situated persons who were/are employed by Defendants in the State of New York as “Drivers” and/or in similar positions who were/are not paid the prevailing minimum wage for all hours worked and overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek for the period of March 8, 2010 to the date of the final disposition of this action (the “FLSA Collective Period”). Plaintiffs and all such other similarly-situated persons are jointly referred to herein as the “FLSA Collective.”

3. The FLSA Collective are similarly situated because they were all subject to Defendants’ common policy and/or practice of not paying the prevailing minimum wage for all hours worked and overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek during the FLSA Collective Period.

4. Plaintiffs’ claims under the NYLL are brought as a class action pursuant to Federal Rule of Civil Procedure Rule (“FRCP”) 23 on behalf of themselves and on behalf of all other similarly-situated persons who were/are employed by Defendants in the State of New York as “Drivers” and/or in similar positions who were/are not paid the prevailing minimum wage for all hours worked, overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek, their wages earned in accordance with their agreed terms of employment, and whose wages were unlawfully deducted and gratuities and/or “charges purported to be gratuities” unlawfully retained, for the period of March 8, 2007 to the

date of the final disposition of this action (the “NYLL Class Period”). Plaintiffs and all other such similarly-situated persons are jointly referred to herein as the “NYLL Class.”

5. The NYLL Class are similarly situated because, during the NYLL Class Period, they were all subject to Defendants’ common policy and/or practice of not paying the prevailing minimum wage for all hours worked, overtime at a rate of one and one-half time their regular rate of pay for all hours worked in excess of 40 hours per week, wages earned in accordance with their agreed terms of employment, of making unlawful deductions from wages, and of illegally retaining employees’ gratuities and “charges purported to be gratuities.”

6. Additionally, Plaintiff Munir individually brings this action to seek redress against Defendants for unlawful retaliation in violation of the Fair Labor Standards Act, 29 U.S.C. §215, and the New York Labor Law, §215 in connection with the unlawful actions Defendants took against him after he originally initiated this suit against Defendants on or about March 8, 2013.

JURISDICTION AND VENUE

7. Pursuant to 28 U.S.C. §§1331 and 1343, the Court has subject matter jurisdiction over this action because this action involves federal questions regarding the deprivation of Plaintiffs’ rights under the FLSA. Pursuant to 28 U.S.C. §1367(a), the Court has supplemental jurisdiction over Plaintiffs’ related claims under the NYLL.

8. Pursuant to 28 U.S.C. §1391(a), venue is proper in this district because a substantial part of the events or omissions giving rise to this action occurred in this district.

9. Plaintiffs’ claims are properly consolidated as a single action because their claims involve the same defendants, arise from the same nexus of facts and circumstances, and involve nearly identical issues of fact and law.

PARTIES

10. Plaintiff Rashid Munir is an adult resident of the State and City of New York, and had been employed by Defendants from approximately June 2012 to (March/April) 2013. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Munir has been filed with the Court.

11. Plaintiff Waqar U.R. Rehman is an adult resident of the state of New Jersey, and had been employed by Defendants from 2007 to May 2012. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Rehman has been filed with the Court.

12. Plaintiff Salman Haq is an adult resident of the state of New York, and had been employed by Defendants from October 2007 to November 2012. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Haq has been filed with the Court.

13. Plaintiff Tahir M. Khan is an adult resident of the state of New York, and had been employed by Defendants from 2006 to January 2013. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Khan has been filed with the Court.

14. Plaintiff Mohammed N. Malik is an adult resident of the state of New York, and had been employed by Defendants from 2004 to February 2012. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Malik has been filed with the Court.

15. Plaintiff Mohammed A. Chattha is an adult resident of the state of New York, and had been employed by Defendants from October 2012 to April 2013. At all relevant times, he was an “employee” within the meaning of all applicable statutes. A Consent to Participate as a Plaintiff in this action executed by Plaintiff Chattha has been filed with the Court.

16. Defendant Shafqat Chaudhry is the President and primary owner of SLS and controls the operations and determines the policies and practices of SLS, including, but not limited to, how employees are compensated. Mr. Chaudhry was and remains an “employer” within the meaning of all applicable statutes.

17. Defendant SLS is a self-proclaimed “worldwide leader of luxury transportation services,” and is a New York corporation with a principal place of business at 43-12 36th Street, Long Island City, New York, 11101. Defendant SLS operates in a number of states across the United States, including New York, Virginia, Florida, Pennsylvania, New Jersey, Illinois, California and Massachusetts, as well as in Washington D.C. At all relevant times, SLS was an “employer” within the meaning of all applicable statutes, and an enterprise engaged in commerce as defined by §203(r) and (s) of the FLSA, with annual gross volume business done in an amount not less than \$500,000.

FACTUAL ALLEGATIONS

Background

18. SLS is a car transportation service that operates under contracts with companies to provide recurrent transportation, largely for the company’s employees. SLS’s customers include large businesses including but not limited to BlackRock, Inc., the Cable News Network (commonly known as “CNN”) and the law firm O’Melveny & Myers LLP.

19. SLS does not hold itself out as a taxicab company; rather, on its website, SLS described the company as a “Chauffeured Transportation,” service and a “worldwide leader of luxury transportation services.”

20. In or around June 2012, Mr. Munir commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Munir drove a Lincoln MKT sports utility vehicle which held less than eight passengers and weighs less than 10,000 pounds.

21. In or around 2007, Mr. Rehman commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Rehman drove a Lincoln MKT sports utility vehicle and a Lincoln Navigator sports utility vehicle, which held less than eight passengers and weighs less than 10,000 pounds.

22. In or around October 2007, Mr. Haq commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Haq drove a Lexus RX sports utility vehicle which held less than eight passengers and weighs less than 10,000 pounds.

23. In or around 2006, Mr. Khan commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Khan drove a Lincoln Towncar sedan which held less than eight passengers and weighs less than 10,000 pounds.

24. In or around 2004, Mr. Malik commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Malik drove Mercedes S-500 and S-550 sedans which held less than eight passengers and weighs less than 10,000 pounds.

25. In or around October 2012, Mr. Chattha commenced his employment with Defendants as a Driver in New York City, New York. While working for Defendants, Plaintiff Chattha drove a Lincoln Towncar sedan and a Lincoln Navigator sports utility vehicle, which held less than eight passengers and weighs less than 10,000 pounds.

26. During the FLSA Collective Period and the NYLL Class Period, Plaintiffs and the members of the FLSA Collective and the NYLL Class were and are not permitted to “cruise” for passengers, use their own initiative to secure patronage, or exercise discretion over their time, routes and/or locations.

27. During the FLSA Collective Period and the NYLL Class Period, SLS has not and does not maintain any permanent “stands” at any airport, train station, or other places where demands for transportation may be expected.

28. During the FLSA Collective Period and the NYLL Class Period, SLS has dispatched Plaintiffs, and the members of the FLSA Collective and the NYLL Class, to their transportation assignments at particular locations and times.

29. SLS vehicles which have been and are used by Plaintiffs and the members of the FLSA Collective and the NYLL Class are not metered. Rather, the fares for each assignment were and are predetermined pursuant to a contract between SLS and the company.

30. During the FLSA Collective Period and the NYLL Class Period, SLS vehicles have not had and do not have any vacancy signs or a list of fares posted either on the interior or exterior of the vehicle.

31. Plaintiff and the members of the FLSA Collective and the NYLL Class were or are paid wages on a straight commission and/or piece rate basis, plus gratuities.

Unlawful Wage Practices and Misclassification Prior To October 2011

32. Prior to in or around October 2011, Defendants misclassified Plaintiffs Rehman, Haq, Khan, Malik and members of the FLSA Collective and the NYLL Class as “independent contractors,” when they were in fact “employees” of Defendants.

33. Prior to in or around October 2011, SLS exerted control over the means and methods of its drivers’ work. For instance, SLS had the authority to hire, fire and discipline its drivers. SLS also set and adjusted regular weekly schedules for its drivers, and required its drivers to stay in certain geographic locations during downtime. SLS also prohibited its drivers from soliciting their own business. SLS owned the vehicles used by its drivers, in addition to the drivers’ cell phones and pagers, and thus controlled the means of the drivers’ employment.

34. SLS’s drivers did not make any personal financial investment into SLS. Rather, SLS entered into agreements to provide services for clients, and paid drivers a set portion of the fee collected, along with, at times, a portion from a predetermined gratuity. SLS completely dictated the terms of its drivers’ compensation.

35. SLS’s drivers also provided SLS’s primary service, and thus were integral to SLS’s business.

36. Indeed, prior to in or around October 2011, SLS agreed to pay Plaintiffs Rehman, Haq, Khan, Malik and the members of the FLSA Collective and the NYLL Class at a rate of 50% of the total amount a customer paid SLS for a trip. SLS also agreed to pay Plaintiffs Rehman, Haq, Khan and Malik and the members of the FLSA Collective and the NYLL Class, a share of the total amount of gratuities paid by a customer. The remainder of the gratuities would be unlawfully retained by Defendants.

37. However, prior to in or around October, 2011, Defendants did not pay Plaintiffs Rehman, Haq, Khan , Malik and the members of the FLSA Collective and the NYLL Class at the agreed to rates. Rather, Defendants misrepresented to Plaintiffs Rehman, Haq, Khan, Malik and the members of the FLSA Collective and the NYLL Class the rate being charged to customers for their routes.

38. Defendants then purported to pay Plaintiffs Rehman, Haq, Khan, Malik and the members of the FLSA Collective and the NYLL Class at a rate of 50% of the artificially lowered, misrepresented rate. As a result, Plaintiffs Rehman, Haq, Khan , Malik and the members of the FLSA Collective and the NYLL Class were paid far less than the agreed upon rate, both as to commissions and as gratuities.

Reclassification and Continued Unlawful Wage Practices

39. In or around October 2011, Defendants re-classified Plaintiffs and the members of the FLSA Collective and the NYLL Class from “independent contractors” to “employees” (the “Reclassification”).

40. Subsequent to the Reclassification, Defendants agreed to pay Plaintiffs and the members of the FLSA Collective and the NYLL Class at a rate of 40% of the total amount a customer paid SLS for a trip. SLS also agreed to pay Plaintiffs and the members of the FLSA Collective and the NYLL Class the total amount of gratuities paid by the customer.

41. However, subsequent to the Reclassification, Defendants did not and have not paid Plaintiffs and the members of the FLSA Collective and the NYLL Class at the agreed to rates. Rather, Defendants have and continue to misrepresent to Plaintiffs and the members of the FLSA Collective and the NYLL Class the rate being charged to customers for their routes.

42. Defendants then purport to pay Plaintiffs and the members of the FLSA Collective and the NYLL Class at a rate of 40% of the artificially lowered, misrepresented rate. As a result, Plaintiffs and the members of the FLSA Collective and the NYLL Class have and continue to be paid far less than the agreed upon rate, both as to commissions and gratuities.

Unlawful Wage Practices Both Before and After Reclassification

43. Both before and after the Reclassification, Plaintiffs and the members of the FLSA Collective and the NYLL Class were and are regularly assigned to work twelve-hour shifts, six days a week, which comes to an average of approximately 72 “on-the-clock” hours per week.

44. Both before and after the Reclassification,, Plaintiffs and the members of the FLSA Collective and the NYLL Class also worked and continue to work “off-the-clock,” including, but not limited to, time spent travelling to assigned locations, time spent during licensing inspections, and time spent washing, servicing and maintaining vehicles.

45. As such, both before and after the Reclassification, Plaintiffs and the members of the FLSA Collective and the NYLL Class worked and continue to work between 72 hours and 84 hours per week.

46. Both before and after the Reclassification, Defendants did not and do not pay Plaintiffs and the members of the FLSA Collective and the NYLL Class overtime at a rate of one and one-half times their regular rate of pay for hours worked in excess of 40 hours per workweek.

47. Both before and after the Reclassification, Defendants did not and do not pay Plaintiffs and the members of the FLSA Collective and the NYLL Class any wages for the “off-the-clock” time spent working for Defendants.

48. Both before and after the Reclassification, Defendants did not and do not pay Plaintiffs and the members of the FLSA Collective and the NYLL Class, the prevailing minimum wage for all hours worked during each workweek.

49. Both before and after the Reclassification, Defendants did not and do not pay Plaintiffs and the members of the FLSA Collective and the NYLL Class their wages earned in accordance with the agreed upon terms of employment.

50. Both before and after the Reclassification, Defendants have made and still make unlawful deductions from the wages of Plaintiffs and the members of the FLSA Collective and the NYLL Class. For instance, Defendants have deducted and continue to unlawfully deduct an amount for “personal auto use” and for “fuel deductions.” Defendants also have withheld and continue to withhold commission payments when Plaintiffs and the members of the FLSA Collective and the NYLL Class arrive late to pick up customers. These deductions are not permitted by law nor were or are authorized by Plaintiffs and other Drivers for the benefit of Plaintiffs and other Drivers.

51. Both before and after the Reclassification, Defendants regularly charged and still charge clients an automatic gratuity/tip fee of approximately 20% of the client’s bill.

52. Defendants led or knowingly allowed their clients to believe that the gratuity/tip would be paid to the drivers.

53. Moreover, Defendants’ clients ordinarily have not and do not leave any gratuity/tip for Plaintiffs and the NYLL Class members other than the automatic gratuity/tip paid to Defendants.

54. Throughout the relevant time period, Defendants had knowledge of N.Y. Lab. Law § 196-d and the legal requirement that employees are entitled to the gratuities/tips or charges purported to be such.

55. Nonetheless, before the Reclassification, Defendants retained a substantial portion of the monies collected pursuant to the Service Charge, and after the Reclassification, withheld and continue to withhold the total amount of gratuities it collects from clients from Plaintiffs and the NYLL Class.

56. By not distributing all gratuities/tips to Plaintiffs and the NYLL Class members, Defendants unlawfully retained gratuities or charges purported to be gratuities.

Retaliation Against Plaintiff Munir

57. As a result of Defendants unlawful pay practices detailed above in violation of the FLSA and NYLL, on March 8, 2013, Plaintiff Munir filed the instant suit on behalf of himself and on behalf of all other similarly-situated employees of Defendants (the "Complaint").

58. On March 12, 2013, Defendants were served with the Complaint.

59. Thereafter, Defendants immediately began a campaign of retaliation against Mr. Munir because of his opposition to Defendants' unlawful pay practices.

60. By way of one example only, Defendants began to dispatch Mr. Munir to far fewer assignments than he had been dispatched to prior to filing the Complaint, directly causing Mr. Munir significant loss of income and other economic harm.

61. Further, when Defendants did dispatch Mr. Munir to assignments, Defendants would dispatch Mr. Munir to less lucrative assignments, resulting in reduced fares and commissions, and unnecessary out-of-pocket expenses.

62. For instance, in the week before Mr. Munir's constructive discharge in late-March 2013, Mr. Munir was not assigned to a single "out-of-town" assignment, which were lucrative assignments. In contrast, prior to filing the Complaint, Mr. Munir was regularly assigned to approximately 8 to 10 "out-of-town" assignments over a two-week period.

63. In addition, Defendants would dispatch Mr. Munir to distant, cancelled assignments, or assignments with incorrect pick-up times, resulting in an even further loss of income and other economic harm.

64. Defendants also harassed and expressed hostility towards Mr. Munir regarding his decision to file the Complaint, such as by threatening his job and his well-being, and demanding that he withdraw the Complaint.

65. As such, as a direct result of Mr. Munir's decision to file the Complaint and seek vindication of his rights under the FLSA and NYLL, Defendants deliberately created intolerable and discriminatory working conditions that severely impeded Mr. Munir's ability to perform his job, caused him to suffer significant economic harm, and to fear for his well-being, forcing Mr. Munir's constructive discharge on or about late-March, 2013.

FLSA COLLECTIVE ACTION ALLEGATIONS

66. Plaintiffs brings their FLSA claims as a collective action pursuant to the FLSA on behalf of themselves and on behalf of all other similarly-situated persons who were/are employed by Defendants in New York as Drivers and/or in similar positions who were/are not paid the prevailing minimum wage for all hours worked and overtime at a rate of one and one-half time their regular rate for all hours worked in excess of 40 hours per workweek during the FLSA Collective Period.

67. The basic job duties of the FLSA Collective were/are the same as or substantially similar to those of Plaintiffs, and the FLSA Collective were/are paid in the same manner and under the same common policies, plans and practices as Plaintiffs.

68. The FLSA Collective, like Plaintiffs, all have been subject to the same unlawful policies, plans and practices of Defendants, including failing to pay the prevailing minimum wage for all hours worked and overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek.

69. During the FLSA Collective Period, Defendants were fully aware of the duties performed by Plaintiffs and the FLSA Collective, and that those duties were not exempt from the minimum wage and overtime provisions of the FLSA.

70. As a result of Defendants' conduct as alleged herein, Defendants violated 29 U.S.C. §206 by not paying the FLSA Collective and Plaintiffs the prevailing minimum wage for all hours worked.

71. As a result of Defendants' conduct as alleged herein, Defendants violated 29 U.S.C. §207 by not paying the FLSA Collective and Plaintiffs overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek.

72. Defendants' violations of the aforementioned statutes were willful, repeated, knowing, intentional and without a good faith basis, and significantly damaged Plaintiffs and the FLSA Collective.

73. As a result of Defendants' conduct, Defendants are liable to Plaintiffs and the FLSA Collective for the full amount of their unpaid minimum wage and overtime, plus an additional equal amount as liquidated damages, plus the attorneys' fees and costs incurred by Plaintiffs and the FLSA Collective.

74. While the exact number of the FLSA Collective is unknown to Plaintiffs at the present time, upon information and belief, there are at least one-hundred other similarly-situated persons who were/are employed by Defendants in New York as Drivers and/or in similar positions during the FLSA Collective Period.

75. Plaintiffs are currently unaware of the identities of the FLSA Collective. Accordingly, Defendants should be required to provide Plaintiffs with a list of all persons employed by Defendants in New York as Drivers and/or in similar positions during the FLSA Collective Period, along with their last known addresses, telephone numbers and e-mail addresses so Plaintiffs can give the FLSA Collective notice of this action and an opportunity to make an informed decision about whether to participate in it.

RULE 23 CLASS ACTION ALLEGATIONS

76. Plaintiffs bring their NYLL claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and on behalf of all other similarly-situated persons who were/are employed by Defendants in the state of New York as Drivers and/or in similar positions who were/are not paid the prevailing minimum wage for all hours worked, overtime at a rate of one and one-half times their regular rate for all hours worked in excess of 40 hours per workweek, wages earned in accordance with their agreed terms of employment, whose wages were unlawfully deducted during the NYLL Class Period, and who were unlawfully denied gratuities.

77. The basic job duties of the NYLL Class were/are the same as or substantially similar to those of Plaintiffs, and the NYLL Class were/are paid in the same manner and under the same common policies, plans and practices as Plaintiffs.

78. The NYLL Class, like Plaintiffs, all have been subject to the same unlawful policies, plans and practices of Defendants, including not paying the prevailing minimum wage for all hours worked, overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek, wages earned in accordance with the agreed terms of employment, making unlawful deductions from wages, and retaining gratuities.

79. During the NYLL Class Period, Defendants were fully aware of the duties performed by Plaintiffs and the NYLL Class, and that those duties were not exempt from the minimum wage, overtime and other applicable provisions of the NYLL and/or its regulations.

80. As a result of Defendants' conduct as alleged herein, Defendants violated the NYLL and/or its regulations by not paying the NYLL Class and Plaintiffs the prevailing minimum wage for all hours worked, overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek, wages earned in accordance with their agreed terms of employment, by making unlawful deductions from wages, and by retaining gratuities.

81. Defendants' violations of the NYLL and/or its regulations were willful, repeated, knowing, intentional and without a good faith basis, and significantly damaged Plaintiffs and the NYLL Class.

82. As a result of Defendants' conduct, Defendants are liable to Plaintiffs and the NYLL Class for the full amount of their unpaid minimum wage, overtime wages, wages earned, and wages deducted, plus an additional amount as liquidated damages, plus the attorneys' fees and costs incurred by Plaintiffs and the NYLL Class.

83. Certification of the NYLL Class' claims as a class action is the most efficient and economical means of resolving the questions of law and fact common to Plaintiffs' claims and

the claims of the NYLL Class. Plaintiffs have standing to seek such relief because of the adverse effect that Defendants' unlawful compensation policies and practices have had on them individually and on members of the NYLL Class. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the NYLL Class is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for Plaintiffs, the NYLL Class and Defendants.

84. Plaintiffs' claims raise questions of law and fact common to the NYLL Class.

Among these questions are:

- (a) Whether Defendants failed to pay Plaintiffs and the NYLL Class the prevailing minimum wage for all hours worked during the NYLL Class Period;
- (b) Whether Defendants failed to pay Plaintiffs and the NYLL Class overtime at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek during the NYLL Class Period;
- (c) Whether Defendants failed to pay Plaintiffs and the NYLL Class their wages earned in accordance with their agreed terms of employment during the NYLL Class Period;
- (d) Whether Defendant made unlawful deductions from the wages of Plaintiffs and the NYLL Class during the NYLL Class Period;
- (e) Whether Defendants' failure to pay the prevailing minimum wage to Plaintiffs and the NYLL Class constitutes a violation of NYLL §650 *et seq.*;
- (f) Whether Defendants' failure to pay overtime to Plaintiffs and the NYLL Class constitutes a violation of NYLL §650 *et seq.* and 12 N.Y.C.R.R. §142.2-2;
- (g) Whether Defendants' failure to pay Plaintiffs and the NYLL Class their wages earned in accordance with their agreed terms of employment constitutes a violation of NYLL §191;

- (h) Whether Defendants' deductions from the wages of Plaintiffs and the NYLL Class constitutes a violation of NYLL §193 and 12 N.Y.C.R.R. §142-2.10;
- (i) Whether the "service charge" charged to Defendants' customers was a gratuity within the meaning of NYLL § 196-d;
- (j) Whether Defendants illegally retained Plaintiffs' and the NYLL Class' gratuities; and
- (k) Whether Defendants' violations of the NYLL and/or its regulations were willful.

85. These common questions of law and fact arise from the same course of events, and each class member will make similar legal and factual arguments to prove liability.

86. Plaintiffs are members of the NYLL Class that they seek to represent. Plaintiffs' claims are typical of the claims of the NYLL Class. The relief Plaintiffs seek for the unlawful policies and practices complained of herein are also typical of the relief which is sought on behalf of the NYLL Class.

87. Plaintiffs' interests are co-extensive with those of the NYLL Class that they seek to represent in this case. Plaintiffs are willing and able to represent the NYLL Class fairly and to vigorously pursue their similar individual claims in this action. Plaintiffs have retained counsel who are qualified and experienced in employment class action litigation, and who are able to meet the time and fiscal demands necessary to litigate a class action of this size and complexity. The combined interests, experience and resources of Plaintiffs and their counsel to litigate the individual and NYLL Class claims at issue in this case satisfy the adequacy of representation requirement of Fed. R. Civ. P. 23(a)(4).

88. Defendants have acted or refused to act on grounds generally applicable to the NYLL Class, making final injunctive and declaratory relief appropriate with respect to the NYLL Class as a whole.

89. Injunctive and declaratory relief are the predominant relief sought in this case because they are the culmination of the proof of Defendants' individual and class-wide liability and the essential predicate for Plaintiffs' and the NYLL Class' entitlement to monetary and non-monetary remedies to be determined at a later stage of the proceedings.

90. The common issues of fact and law affecting Plaintiffs' claims and those of the NYLL Class members, including the common issues identified above, predominate over any issues affecting only individual claims.

91. A class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' claims and the claims of the NYLL Class. There will be no difficulty in the management of this action as a class action.

92. The cost of proving Defendants' violations of the NYLL and the supporting New York State Department of Labor regulations makes it impracticable for Plaintiffs and the NYLL Class to pursue their claims individually. Maintenance of a class action promotes judicial economy by consolidating a large class of plaintiffs litigating identical claims. The claims of the NYLL Class interrelate such that the interests of the members will be fairly and adequately protected in their absence. Additionally, the questions of law and fact common to the NYLL Class arise from the same course of events and each class member makes similar legal and factual arguments to prove the Defendants' liability.

93. The NYLL Class is so numerous that joinder of all members is impracticable. While the exact number of the NYLL Class is unknown to Plaintiffs at the present time, upon information and belief, there are at least one hundred other similarly-situated persons who were/are employed by Defendants in the state of New York as Drivers and/or in similar positions during the NYLL Class Period.

94. Plaintiff is currently unaware of the identities of the NYLL Class. Accordingly, Defendants should be required to provide Plaintiffs with a list of all persons employed by Defendants in the state of New York as Drivers and/or in similar positions during the NYLL Class Period, along with their last known addresses, telephone numbers and e-mail addresses so Plaintiffs can give the NYLL Class notice of this action and an opportunity to make an informed decision about whether to participate in it.

FIRST CLAIM FOR RELIEF
(Failure to Pay Overtime in Violation of 29 U.S.C. §207)

95. Plaintiffs, on behalf of themselves and the FLSA Collective, hereby reallege and incorporate by reference paragraphs 1 through 94 as though they were fully set forth herein.

96. The FLSA requires covered employers, such as Defendants, to pay all non-exempt employees at a rate not less than one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek. Plaintiffs and the FLSA Collective were not exempt from the requirement that Defendants pay them overtime under the FLSA.

97. During the FLSA Collective Period, Defendants knew that Plaintiffs and the FLSA Collective worked between 72 and 84 hours per workweek for Defendants. However, Defendants did not pay them overtime for hours worked in excess of 40 hours per workweek.

98. As a result of Defendants' failure to pay Plaintiffs and the FLSA Collective overtime at a rate of one and one-half times their regular rate of pay for hours worked in excess of 40 hours per workweek, Defendants violated the FLSA.

99. The foregoing conduct of Defendants constitutes willful violations of the FLSA.

100. Defendants' violations of the FLSA have significantly damaged Plaintiffs and the FLSA Collective and entitle them to recover the total amount of their unpaid overtime wages, an additional equal amount in liquidated damages, and attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
(Failure to Pay Minimum Wage in Violation of 29 U.S.C. §206)

101. Plaintiffs, on behalf of themselves and the FLSA Collective, hereby reallege and incorporate by reference paragraphs 1 through 100 as though they were fully set forth herein.

102. The FLSA requires covered employers, such as Defendants, to pay all non-exempt employees the prevailing minimum wage for all hours worked. Plaintiffs and the FLSA Collective were not exempt from the requirement that Defendants pay them the prevailing minimum wage under the FLSA.

103. During the FLSA Collective Period, Defendants did not pay Plaintiffs and the FLSA Collective the prevailing minimum wage for all hours worked for Defendants.

104. As a result of Defendants' failure to pay Plaintiffs and the FLSA Collective the prevailing minimum wage for all hours worked, Defendants violated the FLSA.

105. The foregoing conduct of Defendants constitutes willful violations of the FLSA.

106. Defendants' violations of the FLSA have significantly damaged Plaintiffs and the FLSA Collective and entitle them to recover the total amount of their unpaid minimum wage, an additional equal amount in liquidated damages, and attorneys' fees and costs.

THIRD CLAIM FOR RELIEF
(Failure to Pay Overtime in Violation of NYLL §650 *et seq.* and 12 N.Y.C.R.R. §142-2.2)

107. Plaintiffs, on behalf of themselves and the NYLL Class, hereby reallege and incorporate by reference paragraphs 1 through 106 as though they were fully set forth herein.

108. The NYLL and 12 N.Y.C.R.R. §142-2.2 require a covered employer, such as Defendants, to pay employees overtime at a rate of one and one-half times the employee's regular rate of pay in the manner and methods provided in the FLSA. Plaintiffs and the NYLL

Class were not exempt from the requirement that Defendants pay them overtime under the NYLL and/or its regulations.

109. During the NYLL Class Period, Defendants knew that Plaintiffs and the NYLL Class worked between 72 and 84 hours per workweek for Defendants. However, Defendants intentionally did not pay them overtime for hours worked in excess of 40 hours per workweek.

110. As a result of Defendants' failure to pay Plaintiffs and the NYLL Class overtime at a rate of one and one-half times their regular rate of pay for hours worked in excess of 40 hours per workweek, Defendants violated the NYLL and 12 N.Y.C.R.R. §142-2.2.

111. The foregoing conduct of Defendants constitutes willful violations of the NYLL and/or its regulations.

112. Defendants' violations of the NYLL and/or its regulations have significantly damaged Plaintiffs and the NYLL Class and entitle them to recover the total amount of their unpaid overtime wages, an additional equal amount in liquidated damages, and attorneys' fees and costs.

FOURTH CLAIM FOR RELIEF
(Failure to Pay Minimum Wage in Violation of NYLL §650 *et seq.*)

113. Plaintiffs, on behalf of themselves and the NYLL Class, hereby reallege and incorporate by reference paragraphs 1 through 112 as though they were fully set forth herein.

114. The NYLL requires covered employers, such as Defendants, to pay all non-exempt employees the prevailing minimum wage for all hours worked. Plaintiffs and the NYLL Class were not exempt from the requirement that Defendants pay them the prevailing minimum wage under the NYLL.

115. During the NYLL Class Period, Defendants did not pay Plaintiffs and the NYLL Class the prevailing minimum wage for all hours worked for Defendants, including but not

limited to certain “off-the-clock” hours for which Plaintiffs and the NYLL Class were not paid any wages.

116. As a result of Defendants’ failure to pay Plaintiffs and the NYLL Class the prevailing minimum wage for all hours, Defendants violated the NYLL.

117. The foregoing conduct of Defendants constitutes willful violations of the NYLL.

118. Defendants’ violations of the NYLL have significantly damaged Plaintiffs and the NYLL Class and entitle them to recover the total amount of their unpaid minimum wage, an additional amount in liquidated damages, and attorneys’ fees and costs.

FIFTH CLAIM FOR RELIEF
(Failure to Pay Wages in Violation of NYLL §191)

119. Plaintiffs, on behalf of themselves and the NYLL Class, hereby realleges and incorporates by reference paragraphs 1 through 119 as though they were fully set forth herein.

120. The NYLL requires covered employers, such as Defendants, to pay employees for the wages with the requisite frequency in accordance with their agreed upon terms of employment. Plaintiffs and the NYLL Class were not exempt from the requirement that Defendants pay them for all wages earned in accordance with their agreed terms of employment under the NYLL.

121. During the NYLL Class Period, Defendants did not pay Plaintiffs and the NYLL Class their wages earned in accordance with their agreed terms of employment.

122. As a result of Defendants’ failure to pay Plaintiffs and the NYLL Class their wages earned in accordance with their agreed terms of employment, Defendants violated the NYLL.

123. The foregoing conduct of Defendants constitutes willful violations of the NYLL.

124. Defendants' violations of the NYLL has significantly damaged Plaintiffs and the NYLL Class and entitles them to recover the total amount of their unpaid wages earned in accordance with their agreed terms of employment, an additional amount in liquidated damages, and attorneys' fees and costs.

SIXTH CLAIM FOR RELIEF

(Unlawful Deductions in Violation of NYLL §193 and 12 N.Y.C.R.R. §142-2.10)

125. Plaintiffs, on behalf of themselves and the NYLL Class, hereby reallege and incorporate by reference paragraphs 1 through 124 as though they were fully set forth herein.

126. The NYLL and 12 N.Y.C.R.R. §142-2-10 prohibit covered employers, such as Defendants, from making certain deductions from the wages of employees.

127. During the NYLL Class Period, Defendant unlawfully deducted amounts from the wages of Plaintiffs and the NYLL Class, including but not limited to amounts for "personal auto use" and "fuel deductions."

128. Defendants did not make said deductions in accordance with the provisions of any law or any rule or regulation issued by any governmental agency. Moreover, Plaintiffs and the NYLL Class did not expressly authorize Defendants in writing to make said deductions, and said deductions were not for the benefit of Plaintiffs and the NYLL Class.

129. As a result of Defendants' unlawful deductions from the wages of Plaintiffs and the NYLL Class, Defendants violated the NYLL and 12 N.Y.C.R.R. §142-2-10.

130. The foregoing conduct of Defendants constitute willful violations of the NYLL and 12 N.Y.C.R.R. §142-2-10.

131. Defendants' violations of the NYLL and 12 N.Y.C.R.R. §142-2-10 have significantly damaged Plaintiffs and the NYLL Class and entitle them to recover the total amount

of the wages that were deducted from their pay, an additional amount in liquidated damages, and attorneys' fees and costs.

SEVENTH CLAIM FOR RELIEF
(NYLL Violations for Illegal Deductions from Gratuities)

132. Plaintiffs, on behalf of themselves and the NYLL Class, hereby repeat and reallege each and every allegation in paragraphs 1 through 131, as though fully set forth herein.

133. Plaintiffs and the NYLL Class members were employed by Defendants within the meaning of NYLL §§ 2 and 651.

134. N.Y. Lab. Law § 196-d bars an employer from retaining "any part of a gratuity or of any charge purported to be gratuity[.]"

135. During the NYLL Period, Defendants unlawfully demanded and retained gratuities and "charges purported to be gratuities" from Plaintiffs and the NYLL Class, in violation of NYLL § 196-d.

136. Due to Defendants' NYLL violations, Plaintiffs and the NYLL Class members are entitled to recover from Defendants the amount of retained gratuities, liquidated damages, attorneys' fees and costs, and interest.

EIGHTH CLAIM FOR RELIEF
(Retaliation in Violation of the Fair Labor Standards Act, 29 U.S.C. §215)

137. Plaintiff Munir hereby realleges and incorporates by reference paragraphs 1 through 136 as though fully set forth herein.

138. Defendants retaliated against Plaintiff Munir in violation of the FLSA by adversely altering the terms and conditions of his employment, leading to his constructive discharge because he filed the Action to redress, among other things, Defendants' unlawful employment practices under the FLSA.

139. As a direct and proximate result of the unlawful retaliatory conduct in violation of the FLSA, Plaintiff Munir has suffered and continues to suffer monetary and/or other economic harm for which he is entitled to an award of monetary damages and other relief.

140. As a direct and proximate result of the unlawful discriminatory conduct in violation of the FLSA, Plaintiff Munir has suffered and continues to suffer mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

141. The foregoing conduct of Defendants constitutes willful violations of the FLSA for which Plaintiff Munir is entitled to an award of punitive and/or liquidated damages.

NINTH CLAIM FOR RELIEF
(Retaliation in Violation of New York Labor Law §215)

142. Plaintiff Munir hereby realleges and incorporates by reference paragraphs 1 through 141 as though they were fully set forth herein.

143. Defendants retaliated against Plaintiff Munir in violation of the NYLL by adversely altering the terms and conditions of his employment, eventually leading to his constructive discharge because he filed the Action to redress, among other things, Defendants' unlawful employment practices under the NYLL.

144. As a direct and proximate result of the unlawful retaliatory conduct in violation of the NYLL, Plaintiff Munir has suffered and continues to suffer monetary and/or other economic harm for which he is entitled to an award of monetary damages and other relief.

145. As a direct and proximate result of the unlawful discriminatory conduct in violation of the NYLL, Plaintiff Munir has suffered and continues to suffer mental anguish and emotional distress, including, but not limited to, depression, humiliation, embarrassment, stress

and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which he is entitled to an award of monetary damages and other relief.

146. The foregoing conduct of Defendants constitutes willful violations of the NYLL for which Plaintiff Munir is entitled to an award of punitive and/or liquidated damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, the FLSA Collective and the NYLL Class, respectfully requests that this Court:

- A. Declare that the practices complained of herein are unlawful under applicable federal and state law;
- B. Declare this action to be maintainable as a collective action pursuant to 29 U.S.C. §216, and direct Defendants to provide Plaintiffs with a list of all persons who were/are employed by Defendants in New York as Drivers and/or in similar positions during the FLSA Collective Period, including all last known addresses, telephone numbers and e-mail addresses of each such person so Plaintiffs can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;
- C. Determine the damages sustained by Plaintiffs and the FLSA Collective as a result of Defendants' violations of the FLSA, and award those damages against Defendants and in favor of Plaintiffs and the FLSA Collective, plus such pre-judgment and post-judgment interest as may be allowed by law;
- D. Award Plaintiffs and the FLSA Collective an additional equal amount as liquidated damages because Defendants' violations were willful and/or without a good faith basis;

E. Declare this action to be maintainable as a class action pursuant to Fed. R. Civ. P. 23, and direct Defendants to provide Plaintiffs with a list of all persons who were/are employed by Defendants in the state of New York as Drivers and/or in similar positions during the NYLL Class Period, including all last known addresses, telephone numbers and e-mail addresses of each such person so Plaintiffs can give such persons notice of this action and an opportunity to make an informed decision about whether to participate in it;

F. Designate Plaintiffs as representatives of their class, and their counsel of record as class counsel;

G. Determine the damages sustained by Plaintiffs and the NYLL Class as a result of Defendants' violations of the NYLL and/or its regulations, and award those damages against Defendants and in favor of the Plaintiffs and the NYLL Class, plus such pre-judgment and post-judgment interest as may be allowed by law;

H. Award Plaintiffs and the NYLL Class an additional amount as liquidated damages pursuant to the NYLL because Defendants' violations were willful and/or without a good faith basis;

I. Award Plaintiffs, the FLSA Collective and the NYLL Class their reasonable attorneys' fees and costs and disbursements in this action including, but not limited to, any accountants' or experts' fees; and

J. Enjoin Defendants from engaging in any further acts of illegal retaliation;

K. Award Plaintiff Munir monetary damages in an amount to be determined at trial, plus pre-judgment and post-judgment interest, to compensate him for all monetary and/or economic harm in connection with his claims of unlawful retaliation;

L. Award Plaintiff Munir monetary damages in an amount to be determined at trial, plus pre-judgment and post-judgment interest, to compensate him for all non-monetary and/or compensatory harm in connection with his claims of unlawful retaliation;

M. Award Plaintiff Munir monetary damages in an amount to be determined at trial, plus pre-judgment and post-judgment interest, to compensate him for all other monetary and/or non-monetary losses suffered in connection with his claims of unlawful retaliation;

N. Award Plaintiff Munir punitive and/or liquidated damages in an amount to be determined at trial in connection with his claims of unlawful retaliation;

O. Grant Plaintiffs, the FLSA Collective and the NYLL Class such other and further relief that the Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and on behalf of all other similarly-situated persons, hereby demands a trial by jury on all issues of fact and damages.

Dated: May 7, 2013
New York, New York

Respectfully submitted,

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