

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSEPH C. BRANCATO, on behalf of himself and all  
others similarly situated,

Plaintiff,

-against-

VERIZON NEW YORK, INC.

Defendant.

Docket No.:

**VERIFIED COMPLAINT**

Jury Trial Demanded

JOSEPH BRANCATO ("Plaintiff"), on behalf of himself and all others similarly situated ("FLSA Plaintiffs" and/or "Rule 23 Plaintiffs"), by and through his attorneys, BORRELLI AND ASSOCIATES, P.L.L.C, as and for his Complaint against VERIZON NEW YORK INC. ("Verizon"), alleges upon knowledge as to his own actions and upon information and belief as to all other matters as follows:

**NATURE OF CASE**

1. This is a civil action for damages and equitable relief based upon Defendant's flagrant and willful violations of Plaintiff's rights guaranteed to him by: (i) the overtime provisions of the Fair Labor Standards Acts ("FLSA"), 29 U.S.C. § 207(a); (ii) the minimum wage provisions of the FLSA, 29 U.S.C. § 206(a); (iii) the overtime provisions of the New York Labor Law ("NYLL"), N.Y. Lab. Law § 160; N.Y. Comp. Codes R. & Regs. ("NYCCRR") tit. 12, § 142-2.2; (iv) the minimum wage provisions of the NYLL, N.Y. Lab. Law §652(1); (v) the requirement that employers furnish employees with wage statements containing specific categories of information under the NYLL, N.Y. Lab. Law § 195(3); and (vi) any other claims(s) that can be inferred from the facts set forth herein.

2. Plaintiff has worked for Defendant since 1980, performing - - regardless of the different titles that the Defendant has given him over the years - - the primary job duty of relaying information back and forth between technicians who perform the technical services of Defendant's business and management. Plaintiff remains employed by Defendant in that capacity. Throughout his employment, as described below, Plaintiff worked and works either six or seven days per week, in shifts ranging on average from twelve to fourteen hours per day. However, since 2000, and thus obviously over the past six years pre-dating the commencement of this action, the Defendant has failed to pay Plaintiff at any rate of pay, let alone at the statutorily-required overtime or minimum wage rates of pay, for each hour that Plaintiff worked per week in excess of forty hours as required by the FLSA, the NYLL, and the NYCCRR. In addition, the Defendant failed to furnish Plaintiff with accurate and/or complete wage statements as required by the NYLL on each payday.
3. Defendant paid and treated and continues to pay and treat all of their employees whom they have designated and misclassified as "Local Managers" in this manner.
4. Plaintiff brings this lawsuit against Defendant pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself and all other persons similarly situated during the applicable FLSA limitations period who suffered damages as a result of the Defendants' violations of the FLSA.
5. Plaintiff also brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and all other persons similarly situated during the applicable NYLL limitations period who suffered damages as a result of the Defendant's

violations of the NYLL and the supporting New York State Department of Labor regulations.

### **JURISDICTION AND VENUE**

6. Plaintiff invokes the jurisdiction of this Court pursuant to 29 U.S.C. § 216(b), on behalf of himself and all other persons similarly situated during the applicable FLSA limitations period, who suffered damages as a result of the Defendant's violations of the FLSA.
7. Plaintiff invokes the supplemental jurisdiction of the Court pursuant to 28 U.S.C. § 1367, which confers supplemental jurisdiction on this Court for claims arising under New York law.
8. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391(b)(ii), as all actions comprising the claims for relief occurred within this judicial district, and pursuant to 28 U.S.C. § 1391(b)(i), as the Defendant operates its business within this judicial district.

### **PARTIES**

9. At all relevant times herein, Plaintiff, Joseph C. Brancato, an employee of Defendant, was and is a resident of New York and is a "person" and an "employee" entitled to protection as defined by the FLSA, NYLL, and NYCCRR.
10. At all relevant times herein, Defendant was and is a New York corporation with its principal place of business located at 140 West Street, New York, New York.
11. At all relevant times herein, all Defendants are "employers" and "persons" within the meaning of the FLSA and NYLL. Additionally, the Defendant's qualifying annual business exceeds \$500,000, and the Defendants are engaged in interstate commerce within the meaning of the FLSA as they sold and sell products and used supplies in the course of business that originated in states other than New York, and also operate a



communications network of services that transverse state lines, the combination of which subjects the Defendant to the FLSA's overtime requirements as an enterprise. Furthermore, all of Defendant's employees, including Plaintiff, FLSA Plaintiffs and Rule 23 Plaintiffs, are individually engaged in interstate commerce, as they all handle goods that have been and continue to be moved in interstate commerce. This independently subjects Defendant to the overtime requirements of the FLSA with respect to Plaintiff, FLSA Plaintiffs and Rule 23 Plaintiffs.

### **COLLECTIVE ACTION ALLEGATIONS**

12. Plaintiff seeks to bring this suit to recover from Defendant his full payment of all unpaid minimum wages, overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 216(b), on his own behalf as well as those in the following class:

Current and former employees of Defendant who, during the applicable FLSA limitations period, performed any work for Defendants whom Defendant designated with the title "Local Manager," within the Defendant's Construction Division, who give consent to file a claim to recover damages for (1) overtime compensation that is legally due to them for the time worked in excess of forty hours per week; and/or (2) minimum wages that are legally due to them ("FLSA Plaintiffs").

13. The Defendant treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: performed similar tasks, as described in the "Background Facts" section below; were subject to the same laws and regulations; were paid in the same or similar manner; were not paid at an amount equal to the minimum hourly required rate of pay per hour worked; were required to work in excess of forty hours each workweek; and were

not paid the required one and one-half times their respective regular rates of pay for all overtime hours worked per workweek.

14. At all relevant times, the Defendant is and has been aware of the requirement to pay Plaintiff and all FLSA Plaintiffs at an amount equal to the minimum hourly required rate of pay per hour for all hours worked, as well as the rate of one and one-half times their respective rates of pay for all hours worked each workweek above forty, yet they purposefully chose not to do so.
15. Thus, all FLSA Plaintiffs are victims of Defendant's pervasive practice of willfully refusing to pay their employees minimum wage and overtime compensation for all hours worked per workweek

#### **RULE 23 CLASS ALLEGATIONS**

16. In addition, Plaintiff seeks to maintain this action as a class action pursuant to Federal Rule of Civil Procedure ("FRCP") 23(b)(3), on his own behalf, as well as on behalf of those who are similarly-situated who, during the applicable statutory period, the Defendant subjected to violations of the NYLL, and the NYCCRR.
17. Under FRCP 23(b)(3), a plaintiff must plead that:
  - a. The class is so numerous that joinder is impracticable;
  - b. There are questions of law or fact common to the class that predominate over any individual questions of law or fact;
  - c. Claims or defenses of the representative are typical of the class;
  - d. The representative will fairly and adequately protect the class; and
  - e. A class action is superior to other methods of adjudication.

18. The Rule 23 Class that Plaintiff seeks to define includes:

Current and former employees of Defendant who, during the applicable NYLL limitations period, performed any work for Defendant within the State of New York, whom Defendant designated with the title “Local Manager” within the Defendant’s Construction Division, who (1) did not receive compensation at the legally-required minimum rate of pay for each hour worked; (2) worked in excess of forty hours per week without receiving overtime compensation; and/or (3) were not issued accurate or any pay stubs/wage statements on each payday containing the information required by N.Y. Lab. Law § 195(3) (“Rule 23 Plaintiffs”).

Numerosity

19. During the previous six years, Defendant has, in total, employed at least forty employees that are putative members of this class.

Common Questions of Law and/or Fact

20. There are common questions of law and fact that govern the claims that are available to each and every Rule 23 Plaintiff, including but not limited to the following: the duties that the Defendant required and require each Rule 23 Plaintiff to perform; whether the Defendant denied Rule 23 Plaintiffs compensable time for all hours worked; whether the Defendant required and require each Rule 23 Plaintiff to work in excess of forty hours per week; whether the Defendant compensated and compensate the Rule 23 Plaintiffs at the legally-mandated rate of one and one-half times their respective straight-time rates of pay for hours worked per week over forty or at the legally-prescribed minimum wage rate for each hour worked; whether the Defendant furnished and furnish the Rule 23 Plaintiffs with accurate wage statements on each payday containing the information required by N.Y. Lab. Law § 195(3); whether the Defendant kept and maintained records with respect to each hour worked by the Rule 23 Plaintiffs; whether the Defendant kept and



maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs; whether the Defendant maintains any affirmative defenses with respect to the Rule 23 Plaintiffs' claims; whether the Defendant's actions with respect to the Rule 23 Plaintiffs were in violation of the NYLL and supporting regulations; if so, whether the Defendant's violations were in willful violation of the NYLL and supporting regulations; and if so, what constitutes the proper measure of damages.

Typicality of Claims and/or Defenses

21. As described in the facts section below, Defendant employed Plaintiff as a non-managerial worker. Plaintiff's claims are typical of the claims of the Rule 23 Plaintiffs whom he seeks to represent, as the Rule 23 Plaintiffs work, and/or have worked for Defendant at one or more of their locations in excess of forty hours per week, as non-managerial employees whom the Defendant paid on an hourly basis regardless of hours actually worked. Plaintiff and the Rule 23 Plaintiffs enjoy the same statutory rights under the NYLL to be paid their full straight-time rate for all hours worked up to forty, and one and one-half times their straight-time rates for all hours worked per week in excess of forty, and to be furnished with accurate wage statements on each payday. Plaintiff and the Rule 23 Plaintiffs have all sustained similar types of damages as a result of Defendant's failure to comply with the NYLL and supporting regulations. Plaintiff and the Rule 23 Plaintiffs have all suffered injury including lack of compensation or under-compensation due to Defendant's common policies, practices, and patterns of conduct. Thus, Plaintiff's claims and/or the Defendant's defenses to those claims are typical of the Rule 23 Plaintiffs' claims and the Defendant's defenses to those claims.

Adequacy

22. Plaintiff, as described below, worked the same or similar hours as the Rule 23 Plaintiffs throughout his employment with Defendant. The Defendant did not pay Plaintiff overtime pay for his hours worked over forty each week, or compensate Plaintiff for all hours worked at the minimum wage rate, which is substantially-similar to how the Defendant paid the Rule 23 Plaintiffs. Plaintiff is no longer employed with the Defendant, and thus has no fear of retribution for his testimony. Plaintiff fully anticipates testifying under oath as to all of the matters raised in this Complaint and that will be raised in the Defendant's Answer. Thus, Plaintiff would properly and adequately represent the current and former employees whom the Defendant has subjected to the treatment alleged herein.

Superiority

23. Plaintiff has no, or few, material facts relating to the Rule 23 Plaintiffs' claims that are atypical of those of the putative class. Indeed, at all relevant times herein, Defendant treated Plaintiff identically, or at the very least, substantially similarly, to the Rule 23 Plaintiffs.

24. Any lawsuit brought by a non-managerial employee of the Defendant would be identical to a suit brought by any other employee for the same violations. Thus, separate litigation would risk inconsistent results.

25. Accordingly, this means of protecting the Rule 23 Plaintiffs' rights is superior to any other method, and this method is properly maintainable as a Class Action under FRCP 23(b)(3).



26. Additionally, Plaintiff's counsel has substantial experience in this field of law.

**BACKGROUND FACTS**

27. Defendant owns and operates a telecommunication network that provides telephone, internet and televisions services to customers throughout New York State.

28. Defendant hired Plaintiff in or about 1980. Plaintiff continues to work for Defendant.

29. Defendant initially designated Plaintiff with the title of "Field Forman." Plaintiff held that title until approximately 1995. While he held this title, the Defendants paid Plaintiff overtime compensation for all hours that he worked in excess of forty during any given week. In approximately 1995, with no change in job duties whatsoever, Defendant started to compensate Plaintiff with only straight time pay for overtime hours instead of at the legally-mandated rate one and one-half times his straight time rate pay.

30. In approximately 2000, Defendant designated Plaintiff with the title "Team Leader." Although there was no change in Plaintiff's duties when Defendant changed Plaintiff's title from Field Foreman to "Team Leader," and while Plaintiff continued to work far in excess of forty hours each week, the Defendant stopped paying Plaintiff at any rate of pay, let alone at the statutorily required minimum wage or overtime rates of pay, for any hours that Plaintiff worked per week in excess of forty.

31. In approximately 2002, Defendant designated Plaintiff with the title "Turf Team Leader." There were no changes in Plaintiff's job duties from that of Field Foreman and while Plaintiff continued to work far in excess of forty hours each week, the Defendant continued to not pay Plaintiff at any rate of pay, let alone at the statutorily required minimum wage or overtime rates of pay, for any hours that Plaintiff worked per week in excess of forty.

32. Commencing in approximately 2005, Defendant labeled Plaintiff with the title “Local Manager.” There were no changes in Plaintiff’s job duties from that of Field Foreman as a result of the 2005 title change.
33. “Local Manager” is the current title that Plaintiff holds and while Plaintiff continued and continues to work far in excess of forty hours each week, the Defendant continues to not pay Plaintiff at any rate of pay, let alone at the statutorily required minimum wage or overtime rates of pay, for any hours that Plaintiff worked per week in excess of forty..
34. As part of Verizon’s business, Defendant employs a fleet of employees within the Construction Division with the “Local Manager” job title whose primary job duty is, in reality, relaying information back and forth between technicians who perform the technical services of Defendant’s business and management. Plaintiff is primarily engaged in core, day-to-day business activity of Verizon to relay information back and forth between the technicians and the management, acting as information liaisons between the parties. In addition, Plaintiff also engages in clerical tasks such as paperwork, and performing safety and quality inspections known as “spot checks” using a detailed checklist provided by the Defendant. Plaintiff reports to a Verizon Director (“Director”) in regard to all aspects of his job.
35. To perform his job duties, the Plaintiff does not engage in a supervisory role given the constraints placed upon him by company policy. Plaintiff does not determine what work is to be done by the technicians or in what timeframe. Work assignments are generated by Defendant and transmitted to Plaintiff via computer for Plaintiff to hand out to the technicians. Plaintiff may only readjust work assignments in accordance with Defendant’s strict, uniform corporate guidelines.

36. Plaintiff arrives at work each day between approximately 6:00 - 6:45 a.m.
37. The technicians arrive at work at or after 7:00 a.m. After the technicians leave the premises to begin their scheduled appointments, Plaintiff then visits the individual technicians at their job sites to assure that each technician is on site and performing his/her job. Plaintiff spends a large portion of his day driving a Verizon vehicle from location-to-location throughout a large area of territory spot, checking that technicians are at their scheduled location and performing their jobs. On most days, Plaintiff drives throughout Kings County for approximately five-to-six hours a day to spot check approximately twenty-five different technicians.
38. Defendant tracks the whereabouts of Plaintiff by the use of a GPS tracking device in the company vehicles that Plaintiff drives. Defendant monitors Plaintiff throughout the business day.
39. The Defendant requires Plaintiff to physically maintain a specific area of the garage in which he works in a clean and organized manner. This portion of Plaintiff's job involves cleaning, throwing out trash, and physically moving items in the garage.
40. Defendant requires Plaintiff to clean trucks that technicians use if technicians fail to properly clean them. Additionally, Defendant requires Plaintiff to clean the fleet of trucks in his garage when there is a scheduled inspection by management.
41. Plaintiff's job duties continue each and every day until every technician has finished their work for the day/evening.
42. Plaintiff is mandated to remain on the job and not permitted to leave work for the evening until the last technician has finished his/her scheduled jobs. Plaintiff must be present or available until the last technician has safely returned to the garage.



43. Plaintiff is required to email his Director at the time that the last technician finishes the last job, and then report to his supervisors that all technicians are clocked out.
44. Plaintiff does not have a distinct role in training the technicians or determining what training they are to receive. Technicians receive their primary training from Defendant's training center as well as online computer programs.
45. Plaintiff does not determine the tools and equipment to be used on the job. Defendant either provides materials directly or Defendant's Directors instruct Plaintiff what items to order from suppliers subject to Defendant's approval.
46. Plaintiff has not made the decision to hire or fire any employee of Defendant during his tenure nor does he have the authority to hire, fire, or promote technicians, determine their pay rates or benefits, or give raises.
47. Plaintiff has no authority to make employment-related personnel decisions or provide any real input into those decisions. Plaintiff merely delivers decisions to the technicians regarding discipline or personnel decisions that his superiors have made.
48. Plaintiff does not have the authority to decide whether or not a technician will be disciplined for an infraction. Disciplinary decisions are made by the Human Resources department, Plaintiff's Director, or dictated by company policies, including the technicians' collective bargaining agreement. If the Plaintiff observes a technician in the field violating a company policy, Plaintiff has no authority to take any meaningful action on behalf of Defendant. Rather, Plaintiff interviews the technician and fills in a pre-printed report, which he then delivers to his Director. The Director and or the Director's superiors ultimately addresses any violation.

49. Overall, the Plaintiff's recommendations are given little, if any, weight on all the above issues. As a result, the Plaintiff is engaged in a type of work that requires no exercise of independent judgment or discretion as to any matter of significance.
50. Defendant requires that Plaintiff begin work by 6:45 a.m. daily and requires him to stay until whatever time the last technicians finish for the day. Defendant mandates that Plaintiff cannot leave before 5:00 p.m. on any day.
51. Plaintiff often works until 7:00 p.m., and has worked as late as midnight and on occasion for greater than twenty-four hours at a time.
52. Plaintiff also works at least two weekend days every month. Often, he works as many as five weekend days per month. On those weekend days, Plaintiff works approximately twelve hours per day.
53. Over the last six years, the Plaintiff has consistently worked at least fifty hours of overtime every month, and often much more than that. The Defendant has time records evincing this.
54. As just one example of the amount of overtime worked and documented by Plaintiff, during the week ending May 6, 2013, Plaintiff worked the following hours on the following days:

Monday, May 6, 2013: 6:30 a.m. through 11:00 p.m.;

Wednesday, May 8, 2013: 6:30 a.m. straight through Thursday, May 9, 2013, at 7:00 a.m.;

Friday, May 10, 2013: 6:30 a.m. straight through Saturday, May 11, 2013, at 7:00 a.m.

Thus, during this week, the Defendant required Plaintiff to work, and Plaintiff did in fact work sixty-three and one-half hours.

55. The Defendant designated Plaintiff's pay rate as hourly on his wage statements. Plaintiff's hourly rate is \$54.77. Thus, Plaintiff's overtime compensation rate is \$82.16.
56. For each and every week over the last six years, the Defendant has required Plaintiff to work, and Plaintiff has in fact worked in excess of forty hours per week. Yet, during the last six years, the Defendant has not paid Plaintiff at any rate of pay, let alone at the statutorily-required minimum age or overtime rates of pay, for any hours that Plaintiff has worked per week in excess of forty.
57. The Defendant pays Plaintiff \$4382.00 on a bi-weekly basis.
58. As mentioned above, on those occasions when the Defendant paid Plaintiff the Defendant furnished Plaintiff with a wage statement stating his straight time hourly rate of pay. However, these wage statements were inaccurate in that they failed to include Plaintiff's actual number of hours worked, Plaintiff's overtime rate of pay, and the basis for computing Plaintiff's rate of pay.
59. The Defendant treated all FLSA Plaintiffs and Rule 23 Plaintiffs the same as Plaintiff with respect to the hours that the Defendant required them to work and the rates and methods of payment that the Defendant paid to them.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANT**

*Unpaid Overtime under the FLSA*

60. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
61. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rate for any hours worked exceeding forty in a workweek.



62. As described above, the Defendant is an employer within the meaning of the FLSA, while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.
63. As also described above, Plaintiff and FLSA Plaintiffs worked in excess of forty hours per week, yet the Defendant failed to compensate Plaintiff and FLSA Plaintiffs in accordance with the FLSA's overtime provisions.
64. The Defendant willfully violated the FLSA.
65. Plaintiff and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective standard rates of pay.
66. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for the Defendant's violation of the FLSA's overtime provisions.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANT**

*Unpaid Minimum Wages under the FLSA*

67. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
68. 29 U.S.C. § 206 requires employers to compensate their employees at a rate not less than the Federally-mandated minimum wage, which at all times within the FLSA limitations period as it pertains to this lawsuit, was \$7.25 an hour.
69. As described above, Defendant is an employer within the meaning of the FLSA, while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.
70. As also described above, Plaintiff and FLSA Plaintiffs worked in excess of forty hours per week, yet the Defendant failed to compensate Plaintiff and FLSA Plaintiffs in accordance with the FLSA's minimum wage provisions.

71. The Defendant willfully violated the FLSA.
72. Plaintiff and FLSA Plaintiffs are entitled to pay at minimum wage for all hours worked per week up to forty, and at the rate of one and one-half times minimum wage for hours worked in excess of forty in a workweek.
73. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for the Defendant's violation of the FLSA's minimum wage provisions.

**THIRD CLAIM FOR RELIEF AGAINST DEFENDANT**

**Unpaid Overtime under the NYLL and NYCCRR**

74. Plaintiff and Rule 23 Plaintiffs repeat, reiterate and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
75. NYLL § 160 and NYCCRR tit. 12, § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rate for any hours worked exceeding forty in a workweek.
76. As described above, Defendant is an employer within the meaning of the NYLL, while Plaintiff and Rule 23 Plaintiffs are employees within the meaning of the NYLL and the NYCCRR.
77. As also described above, Plaintiff and Rule 23 Plaintiffs worked in excess of forty hours per week, yet the Defendant failed to compensate Plaintiff and Rule 23 Plaintiffs in accordance with the NYLL's and NYCCRR's overtime provisions.
78. The Defendant willfully violated the NYLL and NYCCRR.
79. Plaintiff and Rule 23 Plaintiffs are entitled to their overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective standard rates of pay.

80. Plaintiff and Rule 23 Plaintiffs are also entitled to liquidated damages, interest, and attorneys' fees for the Defendant's violation of the NYLL's and NYCCRR's overtime provisions.

**FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT**

**Unpaid Minimum Wages under the NYLL and NYCCRR**

81. Plaintiff and Rule 23 Plaintiffs repeat, reiterate and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

82. NYLL § 652 and NYCCRR tit. 12, § 141-1.3 require employers to compensate their employees at a rate not less than \$7.15 an hour on and after January 1, 2007; \$7.25 an hour on and after July 24, 2009; and \$8.00 an hour on and after December 31, 2013.

83. As described above, Defendant is an employers within the meaning of the NYLL, while Plaintiff and Rule 23 Plaintiffs are employees within the meaning of the NYLL.

84. As also described above, Plaintiff and Rule 23 Plaintiffs worked in excess of forty hours per week, yet the Defendant failed to compensate Plaintiff and Rule 23 Plaintiffs in accordance with the NYLL's and NYCCRR's minimum wage provisions.

85. The Defendant willfully violated the NYLL and NYCCRR.

86. Plaintiff and Rule 23 Plaintiffs are entitled to minimum wage pay for all hours worked per week up to forty in a workweek and one and one-half times their hourly wage rate for all hours worked in excess of forty in a workweek.

87. Plaintiff and Rule 23 Plaintiffs are also entitled to liquidated damages, interest, and attorneys' fees for the Defendant's violation of the NYLL's and NYCCRR's minimum wage provisions.



**FIFTH CLAIM FOR RELIEF AGAINST DEFENDANT**

**Failure to Furnish Proper Wage Statements in Violation of the NYLL**

88. Plaintiff and Rule 23 Plaintiffs repeat, reiterate and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
89. NYLL § 195(3) requires employers to furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.
90. As described above, the Defendant willfully failed to furnish Plaintiff and Rule 23 Plaintiffs with accurate wage statements containing the criteria required under the NYLL.
91. Pursuant to NYLL § 198(1-d), the Defendant is liable to Plaintiff and Rule 23 Plaintiffs in the amount of \$100 for each failure to provide an accurate and/or complete wage statement.
92. In addition to statutory penalties, Defendant is also liable to Plaintiff and Rule 23 Plaintiffs for liquidated damages and attorneys' fees.

**DEMAND FOR A JURY TRIAL**

93. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff, FLSA Plaintiffs and Rule 23 Plaintiffs demand a trial by jury in this action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand judgment against the Defendant as follows:

- a. A judgment declaring that the practices complained of herein are unlawful and in violation of the aforementioned United States and New York State laws and supporting regulations;

- b. An order restraining Defendant from taking any acts of retaliation against Plaintiff, FLSA Plaintiffs or Rule 23 Plaintiffs for their participation in this lawsuit;
- c. All damages that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs have sustained as a result of the Defendant's conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs would have received but for the Defendant's unlawful payment practices;
- d. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;
- e. Awarding Plaintiff, FLSA Plaintiffs and Rule 23 Plaintiffs their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs;
- f. Designation of Plaintiff and his counsel as class/collective action representative under the FLSA and Rule 23;
- g. Pre-judgment and post-judgment interest, as provided by law; and

- h. Granting Plaintiff, FLSA Plaintiffs and Rule 23 Plaintiffs other and further relief as this Court finds necessary and proper.

Dated: Great Neck, New York  
May 20, 2014

Respectfully submitted,

BORRELLI & ASSOCIATES, P.L.L.C.

*Attorneys for Plaintiff*

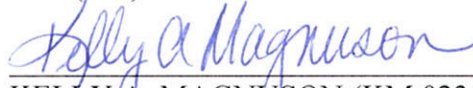
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