

**SUMMONS ISSUED**

**CV-11 5498**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
WILLIAM HERMANEK and WILLIAM McCLEAN, on :  
behalf of themselves and all others similarly situated, :

Plaintiffs, :

- against - :

PRIME DIAGNOSTIC IMAGING CORP., :

Defendant. :  
----- X

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ NOV 10 2011 ★  
**COMPLAINT**  
LONG ISLAND OFFICE

**WEXLER, J.  
BOYLE, M.**

Plaintiffs, WILLIAM HERMANEK and WILLIAM McCLEAN, on behalf of themselves and all others similarly situated, by and through their attorneys, SHULMAN KESSLER LLP, complaining of the defendant, allege as follows:

**INTRODUCTION**

1. Plaintiffs bring this action seeking monetary damages and affirmative relief based upon defendant's violation of the Fair Labor Standards Act of 1938 (hereinafter referred to as "FLSA"), as amended, 29 U.S.C. § 201, *et seq.*, the New York State Labor Law (hereinafter referred to as "NYLL") and other appropriate rules, regulations, statutes and ordinances.

**STATEMENT PURSUANT TO LOCAL RULE 9**

2. For purposes of complying with Local Rule 9, plaintiffs state that they have no corporate parent, subsidiary or affiliate and that there are no other interested parties.

**JURISDICTION & VENUE**

3. Jurisdiction of the Court over this controversy is based upon 29 U.S.C. 201, *et seq.*, 28 U.S.C. §§ 1331 and 1337 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

4. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

5. Defendant does business in the State of New York, within the Eastern District of New York, maintaining a place of business at 3075 Veterans Memorial Highway, Ronkonkoma, New York.

6. Accordingly, this action properly lies in the Eastern District of New York, pursuant to 28 U.S.C. § 1391.

### **THE PARTIES**

7. The plaintiff WILLIAM HERMANEK is a resident of the County of Suffolk, State of New York.

8. At all times relevant to the Complaint, plaintiff WILLIAM HERMANEK, was and still is an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

9. The plaintiff WILLIAM McCLEAN is a resident of the County of Suffolk, State of New York.

10. At all times relevant to the Complaint, plaintiff WILLIAM McCLEAN, was and still is an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

11. Upon information and belief, defendant PRIME DIAGNOSTIC IMAGING CORP., was and still is a domestic business corporation organized and existing pursuant to the laws of the State of New York.

12. Upon information and belief, defendant PRIME DIAGNOSTIC IMAGING CORP.'s principal place of business was and still is at 3075 Veterans Memorial Highway, Ronkonkoma, New York 11779.

13. Upon information and belief, and at all times hereinafter mentioned, the defendant PRIME DIAGNOSTIC IMAGING CORP., was and still is engaged in the business of performing noninvasive ultrasound procedures.

14. At all times hereinafter mentioned, defendant PRIME DIAGNOSTIC IMAGING CORP., was and still is an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and NYLL § 190(3).

15. At all times hereinafter mentioned, the activities of the defendant constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

16. At all times hereinafter mentioned, defendant employed employees, including the plaintiffs herein, who regularly engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of Section 3(b), (g), (i) and (j) of the FLSA, 29 U.S.C. § 203(b), (g), (i), (j), (r) & (s).

17. At all times hereinafter mentioned, defendant's annual gross volume of sales made or business done is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

**FACTS**

18. That the plaintiff WILLIAM HERMANEK was employed by the defendant from in or about June 2011 until October 31, 2011.

19. Plaintiff WILLIAM HERMANEK was an employee of the defendant, working under its direct supervision.

20. That during the course of his employment with the defendants, the plaintiff WILLIAM HERMANEK, was a records clerk.

21. At all times hereinafter mentioned, plaintiff WILLIAM HERMANEK was required to be paid overtime pay at the statutory rate of time and one-half his regular rate of pay after he had worked forty (40) hours in a workweek.

22. Plaintiff WILLIAM HERMANEK worked more than forty-five (45) hours in most workweeks in which he was employed by the defendant.

23. Defendant failed to compensate the plaintiff WILLIAM HERMANEK for time worked in excess of forty (40) hours per week at a rate of at least one and one-half times his regular hourly rate, throughout the entire term of his employment with the defendant.

24. That the plaintiff WILLIAM McCLEAN was employed by the defendant from in or about June 2011 until October 31, 2011.

25. Plaintiff WILLIAM McCLEAN, was an employee of the defendant, working under its direct supervision.

26. That during the course of his employment with the defendants, the plaintiff WILLIAM McCLEAN was a records clerk.

27. At all times hereinafter mentioned, plaintiff WILLIAM McCLEAN was required to be paid overtime pay at the statutory rate of time and one-half his regular rate of pay after he worked forty (40) hours in a workweek.

28. Plaintiff WILLIAM McCLEAN worked more than forty-five (45) hours in most workweeks in which he was employed by the defendant.

29. Defendant failed to compensate the plaintiff WILLIAM McCLEAN for time worked in excess of forty (40) hours per week at a rate of at least one and one-half times his regular hourly rate, throughout the entire term of his employment with the defendant.

### **COLLECTIVE ACTION CLAIMS**

30. Upon information and belief, there are approximately thirty (30) current and former employees that are similarly situated to the plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN, who have been denied overtime compensation.

31. Plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN represent other workers, and are acting on behalf of the defendant's current and former employees' interests as well as their own interests in bringing this action.

32. Plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN seek to proceed as a collective action with regard to the First Cause of Action, pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following class of persons:

All persons who are currently, or have been employed by the defendant, at any time during the three (3) years prior to the filing of their respective consent forms, who were paid on an hourly basis and worked greater than forty(40) hours per week.

33. Former and current employees similarly situated to plaintiffs, are readily identifiable and locatable through use of the defendant's records. These similarly situated employees should be

notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, persons similarly situated to the plaintiffs, have been unlawfully deprived of overtime pay, in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by the defendant.

**AS AND FOR A FIRST CAUSE OF ACTION ON**  
**BEHALF OF PLAINTIFFS WILLIAM HERMANEK AND WILLIAM McCLEAN**  
**AND THE FLSA COLLECTIVE CLASS**  
**FOR FAILURE TO PAY OVERTIME,**  
**A FLSA VIOLATION**

34. Plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN on behalf of themselves and the FLSA collective class, repeat and reallege each and every allegation contained in paragraphs “1” through “33” of the Complaint, with the same force and effect, as if fully alleged herein.

35. Defendant employed plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN for workweeks longer than forty (40) hours and willfully failed to compensate the plaintiffs for the time worked in excess of forty (40) hours per week, at a rate of at least one and one-half (1 and 1/2) times the regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

36. The complete records concerning the number of hours worked by the plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN, as well as the compensation plaintiffs received in workweeks in which excess hours were worked are in the exclusive possession and control of the defendant, and as such, the plaintiffs are unable to state at this time the exact amount due and owing to them.

37. The plaintiffs WILLIAMHERMANEK and WILLIAMMcCLEAN have expressed their consent to make these claims against the defendant by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit “A,” annexed hereto).

38. As a consequence of the willful underpayment of wages, alleged above, the plaintiffs, WILLIAM HERMANEK and WILLIAM McCLEAN have incurred damages thereby and the defendant is indebted to them in the amount of the unpaid overtime compensation, together with interest and liquidated damages, in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION ON**  
**BEHALF OF PLAINTIFFS**  
**FOR FAILURE TO PAY OVERTIME,**  
**A NYLL VIOLATION**

39. Plaintiffs repeat and reallege each and every allegation contained in paragraphs “1” through “38” of the Complaint, with the same force and effect, as if fully alleged herein.

40. Defendant employed plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN for workweeks longer than forty (40) hours and willfully failed to compensate the plaintiffs for the time worked in excess of forty (40) hours per week, at a rate of at least one and one-half (1 and 1/2) times the regular hourly rate, in violation of the requirements of NYLL.

41. The complete records concerning the number of hours worked by the plaintiffs WILLIAMHERMANEK and WILLIAM McCLEAN as well as the compensation plaintiffs received in workweeks in which excess hours were worked are in the exclusive possession and control of the defendant, and as such, the plaintiffs are unable to state at this time the exact amount due and owing to them.

42. By the course of conduct set forth above, defendant has violated N.Y. Lab. Law § 650, *et seq.*; 12 N.Y.C.R.R. § 142-2.2.

43. Defendant has a policy and practice of refusing to pay overtime compensation to the plaintiffs.

44. Defendant's failure to pay overtime compensation to plaintiffs was willful within the meaning of N.Y. Lab. Law § 663.

45. As a consequence of the willful underpayment of wages, alleged above, the plaintiffs have incurred damages thereby and the defendant is indebted to them in the amount of the unpaid overtime compensation and such other legal and equitable relief due to the defendant's unlawful and willful conduct, as the Court deems just and proper.

46. Plaintiffs seek recovery of liquidated damages, attorneys' fees, and costs to be paid by the defendant as provided by the NYLL.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN, on behalf of themselves and the FLSA Collective Class, on the first cause of action:

- a. Judgment against defendant for plaintiffs' unpaid back wages at the applicable overtime rate;
- b. An equal amount to the overtime wage damages as liquidated damages;
- c. Judgment against defendant that its violations of the FLSA were willful;
- d. To the extent liquidated damages are not awarded, an award of prejudgment interest;
- e. All costs and attorneys' fees incurred prosecuting these claims; and
- f. For such further relief as the Court deems just and equitable.



WHEREFORE, plaintiffs WILLIAM HERMANEK and WILLIAM McCLEAN pray for the following relief as follows, on the second cause of action:

- a. Judgment against defendant for an amount equal to plaintiffs' unpaid back wages at the applicable overtime rate;
- b. Liquidated damages at the applicable rate;
- c. All costs and attorneys' fees incurred in prosecuting these claims; and
- d. For further relief as this Court deems just and equitable.

Dated: Melville, New York  
November 8, 2011

Yours, etc.,

SHULMAN KESSLER LLP

By:   
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mm@shulmankessler.com

**EXHIBIT "A"**

**CONSENT FORM**

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer, Prime Diagnostic Imaging Corp. to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Prime Diagnostic Imaging Corp.
2. During the past three (3) years, there were occasions when I worked more than forty (40) hours in a week for Prime Diagnostic Imaging Corp., and I did not receive proper overtime compensation for those hours.
3. I authorize Shulman Kessler LLP to represent me in this case.


Date: 11/4/11

  
Signature  
William Hermank  
Print Name

**CONSENT FORM**

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against my current/former employer, Prime Diagnostic Imaging Corp. to secure any relief that may be awarded, including overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Prime Diagnostic Imaging Corp.
2. During the past three (3) years, there were occasions when I worked more than forty (40) hours in a week for Prime Diagnostic Imaging Corp, and I did not receive proper overtime compensation for those hours.
3. I authorize Shulman Kessler LLP to represent me in this case.

Date: 11/7/11



Signature

William McKean

Print Name