

4. While employed as ASMs by Defendants, Plaintiffs consistently worked over 40 hours per week without ever receiving premium overtime pay. Throughout the relevant period, it was Defendants' policy and practice to deprive Plaintiffs of their earned overtime wages. In order to avoid paying Plaintiffs' overtime premiums for the hours they worked in excess of 40 per workweek, Defendants misclassified their ASM position as exempt from the overtime provisions of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL" or "N.Y. Lab. Law").

5. Plaintiffs Robert Laurie and Eric Stein bring this action on behalf of themselves and all similarly situated current and former ASMs at Defendants' Lacrosse Unlimited stores who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.* and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that deprived Plaintiffs Robert Laurie and Eric Stein and others similarly situated of their lawfully earned wages. Plaintiffs Robert Laurie and Eric Stein seek permission to give notice of this action pursuant to 29 U.S.C. § 216(b) to all persons who are presently, or have at any time during the 3 years immediately preceding the filing of this action, worked for Defendants' Lacrosse Unlimited stores as ASMs.

6. Plaintiffs Robert Laurie and Jason Vergara (the "New York Plaintiffs") also bring this action on behalf of themselves and all similarly situated current and former ASMs of Lacrosse Unlimited who worked in New York pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

7. In order to serve their customers and make profit at their stores, Defendants require their ASMs to spend the vast majority of their time performing the same duties as non-exempt

hourly sales associates. Specifically, Lacrosse Unlimited's ASMs' primary duty is selling merchandise. Lacrosse Unlimited's ASMs who are classified as exempt are required to perform this non-exempt work in order to maximize profits through customer interaction.

8. Throughout the relevant period, it has been Lacrosse Unlimited's policy to uniformly classify ASMs as exempt from federal and state overtime provisions and not to pay ASMs any overtime wages.

9. In order to keep the Lacrosse Unlimited stores staffed, Lacrosse Unlimited regularly requires ASMs to work in excess of 40 hours per week.

10. The primary duties of ASMs are non-exempt: including selling merchandise, and doing work, such as stocking and unpacking merchandise, and cleaning the stores. These primary duties do not vary from one Lacrosse Unlimited store to another.

11. The primary duties of ASMs do not fall under any of the exemptions under federal or state overtime laws.

12. By the conduct described in this Class and Collective Action Complaint, Defendants have violated the FLSA, as well as NYLL, by failing to pay ASMs, including Plaintiffs, the overtime wages they have earned and to which they are entitled by law.

JURISDICTION & VENUE

13. 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.

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

15. Defendants own and operate Lacrosse Unlimited stores in Nassau and Suffolk

Counties and maintain a principal place of business at 145 Marcus Avenue, Suite 2, Hauppauge, New York 11788.

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

THE PARTIES

17. Robert Laurie is a resident of the County of Nassau, State of New York.

18. At all times relevant to the Complaint, Robert Laurie was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

19. From November 2012 through February 2013, Robert Laurie was employed by Defendants as an ASM.

20. Eric Stein is a resident of the County of Denton, State of Texas.

21. At all times relevant to the Complaint, Eric Stein was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

22. From December 2012 through March 2013, Eric Stein was employed by Defendants as an ASM.

23. Jason Vergara is a resident of the County of Queens, State of New York.

24. At all times relevant to the Complaint, Jason Vergara was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and N.Y. Lab. Law § 190(2).

25. From October 2010 through January 2011, Jason Vergara was employed by Defendants as an ASM.

26. Jason Vergara also occasionally worked as a floating ASM for Defendants from on or about March 2012 until on or about May 2012 at the Lacrosse Unlimited store located in

Annapolis, Maryland as well as in the Lacrosse Unlimited stores in Vienna, Virginia and Alexandria, Virginia.

27. Plaintiffs have expressed their consent to make these claims against the Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). (*See* Exhibit A, annexed hereto).

28. Upon information and belief, Defendant Lacrosse Unlimited was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

29. At all times hereinafter mentioned, Defendant Lacrosse Unlimited was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

30. At all times hereinafter mentioned, the activities of Defendant Lacrosse Unlimited constituted an “enterprise” within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

31. Upon information and belief, Defendants maintain control, oversight, and direction over their operations and employment practices.

32. Defendants apply the same employment policies, practices, and procedures to all ASMs.

33. At all times hereinafter mentioned, Defendants employed employees, including 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).

34. Defendants' annual gross volume of business is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

35. At all relevant times, Defendants maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

36. Defendants apply the same employment policies, practices, and procedures to all ASMs employed at Defendants' Lacrosse Unlimited stores, including policies, practices, and procedures with respect to payment of overtime compensation.

37. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone owns and/or operates Defendant Lacrosse Unlimited.

38. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is the President of Defendant Lacrosse Unlimited.

39. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is the Vice-President of Defendant Lacrosse Unlimited.

40. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is a shareholder of Defendant Lacrosse Unlimited.

41. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is a corporate officer of Defendant Lacrosse Unlimited.

42. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is the Chief Executive Officer of Defendant Lacrosse Unlimited.

43. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone is an agent of Defendant Lacrosse Unlimited.

44. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone has the authority over personnel decisions for Defendant Lacrosse Unlimited.

45. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone has the authority over payroll decisions for Defendant Lacrosse Unlimited.

46. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone supervises employees of the Defendant Lacrosse Unlimited.

47. Upon information and belief, and at all times hereinafter mentioned, Defendant Joseph Desimone has the authority to hire and fire employees for Defendant Lacrosse Unlimited.

48. Defendant Joseph Desimone has the power to make binding decisions for Defendant Lacrosse Unlimited.

49. Defendant Joseph Desimone has the power to transfer the assets or liabilities of Defendant Lacrosse Unlimited.

50. Defendant Joseph Desimone has the power to declare bankruptcy on behalf of Defendant Lacrosse Unlimited.

51. Defendant Joseph Desimone has the power to enter into contracts on behalf of Defendant Lacrosse Unlimited.

52. At all times hereinafter mentioned, Defendant Joseph Desimone was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

53. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone owns and/or operates Defendant Lacrosse Unlimited.

54. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is the President of Defendant Lacrosse Unlimited.

55. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is the Vice-President of Defendant Lacrosse Unlimited.

56. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is a shareholder of Defendant Lacrosse Unlimited.

57. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is a corporate officer of Defendant Lacrosse Unlimited.

58. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is the Chief Executive Officer of Defendant Lacrosse Unlimited.

59. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone is an agent of Defendant Lacrosse Unlimited.

60. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone has the authority over personnel decisions for Defendant Lacrosse Unlimited.

61. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone has the authority over payroll decisions for Defendant Lacrosse Unlimited.

62. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone supervises employees of the Defendant Lacrosse Unlimited.

63. Upon information and belief, and at all times hereinafter mentioned, Defendant Samuel Desimone has the authority to hire and fire employees for Defendant Lacrosse Unlimited.

64. Defendant Samuel Desimone has the power to make binding decisions for Defendant Lacrosse Unlimited.

65. Defendant Samuel Desimone has the power to transfer the assets or liabilities of Defendant Lacrosse Unlimited.

66. Defendant Samuel Desimone has the power to declare bankruptcy on behalf of Defendant Lacrosse Unlimited.

67. Defendant Samuel Desimone has the power to enter into contracts on behalf of Defendant Lacrosse Unlimited.

68. At all times hereinafter mentioned, Defendant Samuel Desimone was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

69. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone owns and/or operates Defendant Lacrosse Unlimited.

70. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is the President of Defendant Lacrosse Unlimited.

71. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is the Vice-President of Defendant Lacrosse Unlimited.

72. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is a shareholder of Defendant Lacrosse Unlimited.

73. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is a corporate officer of Defendant Lacrosse Unlimited.

74. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is the Chief Executive Officer of Defendant Lacrosse Unlimited.

75. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone is an agent of Defendant Lacrosse Unlimited.

76. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone has the authority over personnel decisions for Defendant Lacrosse Unlimited.

77. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone has the authority over payroll decisions for Defendant Lacrosse Unlimited.

78. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone supervises employees of the Defendant Lacrosse Unlimited.

79. Upon information and belief, and at all times hereinafter mentioned, Defendant Paul Desimone has the authority to hire and fire employees for Defendant Lacrosse Unlimited.

80. Defendant Paul Desimone has the power to make binding decisions for Defendant Lacrosse Unlimited.

81. Defendant Paul Desimone has the power to transfer the assets or liabilities of Defendant Lacrosse Unlimited.

82. Defendant Paul Desimone has the power to declare bankruptcy on behalf of Defendant Lacrosse Unlimited.

83. Defendant Paul Desimone has the power to enter into contracts on behalf of Defendant Lacrosse Unlimited.

84. At all times hereinafter mentioned, Defendant Paul Desimone was and still is an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law § 190(3).

COLLECTIVE-WIDE FACTUAL ALLEGATIONS

85. Upon information and belief, there are approximately more than 40 current and former ASMs that are similarly situated to Plaintiffs Robert Laurie and Eric Stein who were denied overtime compensation by Defendants.

86. Plaintiffs Robert Laurie and Eric Stein bring the First Cause of Action, on behalf of themselves and all similarly situated persons who have worked for Defendants as an ASM at

any Lacrosse Unlimited store in the United States at any time starting from on or after September 29, 2011 through present and who elect to opt-in to this action (the “FLSA Collective”).

87. Plaintiffs Robert Laurie and Eric Stein represent other ASMs at Defendants’ Lacrosse Unlimited stores, and are acting on behalf of the interests of those ASMs, as well as their own interests in bringing this action.

88. All of the work that Plaintiffs Robert Laurie and Eric Stein and the FLSA Collective performed was assigned by Defendants, and/or Defendants were aware of all of the work that Plaintiffs Robert Laurie, Eric Stein, and the FLSA Collective performed.

89. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs Robert Laurie and Eric Stein and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiffs Robert Laurie and Eric Stein and the members of the FLSA Collective overtime wages for hours that they worked in excess of 40 hours per workweek;
- b. willfully misclassifying Plaintiffs Robert Laurie and Eric Stein and the members of the FLSA Collective as exempt from the protections of the FLSA; and
- c. willfully failing to record all of the time that its employees, including Plaintiffs Robert Laurie and Eric Stein and the FLSA Collective, have worked for the benefit of Defendants.

90. Defendants are aware or should have been aware that federal law required them to pay employees performing non-exempt duties, including Plaintiffs Robert Laurie and Eric Stein and members of the FLSA Collective, an overtime premium for hours worked in excess of 40 per workweek.

91. Plaintiffs Robert Laurie and Eric Stein and the FLSA Collective all perform or

performed the same primary duty: sales.

92. Defendants' unlawful conduct has been widespread, repeated, and consistent.

CLASS ACTION ALLEGATIONS

The New York Class

93. The New York Plaintiffs bring the Second and Third Causes of Action, the NYLL claims, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all ASMs who work or have worked at any store location in New York State between September 29, 2008 and the date of final judgment in this matter (the "New York Class").

94. Excluded from the New York Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Lacrosse Unlimited; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

95. The members of the New York Class are so numerous that joinder of all members is impracticable.

96. Upon information and belief, the size of the New York Class is at least 50 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

97. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- a. whether Defendants violated NYLL, Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- b. whether Defendants failed to compensate the New York Plaintiffs and the New York Class for hours worked in excess of 40 hours per workweek;

- c. whether Defendants misclassified the New York Plaintiffs and members of the New York Class;
- d. whether Defendants failed to keep true and accurate time and pay records for all hours worked by the New York Plaintiffs and the New York Class, and other records required by the NYLL;
- e. whether Defendants' policy of failing to pay ASMs overtime was instituted willfully or with reckless disregard of the law; and
- f. the nature and extent of class-wide injury and the measure of damages for those injuries.

98. The claims of the New York Plaintiffs are typical of the claims of the New York Class they seek to represent. The New York Plaintiffs and all members of the New York Class who work, or have worked, for Defendants as an ASM in New York State enjoy the same statutory rights under the NYLL to be paid overtime wages. The New York Plaintiffs and members of the New York Class have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. The New York Plaintiffs and the members of the New York Class have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

99. The New York Plaintiffs will fairly and adequately represent and protect the interests of the members of the New York Class. The New York Plaintiffs understand that as class representatives, they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. The New York Plaintiffs recognize that as class representatives, they must represent and consider the interests of the class just as they would represent and consider their own interests. The New York Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the interests of the class. The New York Plaintiffs recognize that any resolution of a class action must be in the best interest of the class.

The New York Plaintiffs understand that in order to provide adequate representation, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. The New York Plaintiffs have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the New York Plaintiffs and the New York Class members.

100. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the New York Class have been damaged and are entitled to recovery as a result of Defendants' violation of the NYLL as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the New York Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiffs lack the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

101. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

COMMON FACTUAL ALLEGATIONS

102. Throughout their employment with Defendants, Plaintiffs and the members of the FLSA Collective and the New York Class (collectively "Class Members") consistently worked more than 40 hours per week.

103. Defendants were aware that Plaintiffs and the Class Members worked more than 40 hours per workweek, yet Defendants failed to pay them any overtime compensation for any of the hours worked over 40 in a workweek

104. Defendants did not keep accurate records of hours worked by Plaintiffs and the Class Members'. That is, Plaintiffs' and Class Members' hours are not recorded on pay stubs, and Plaintiffs were never required to clock in or out, or otherwise record their time.

105. Plaintiffs' and the Class Members' primary duty was not management.

106. Plaintiffs' and the Class Members' primary duties were non-exempt duties including performing the duties of the hourly-paid, non-exempt sales associates, including selling merchandise, and doing work, such as stocking and unpacking merchandise, and cleaning the stores. Plaintiffs and Class Members spent the vast majority of their time performing these non-exempt duties. These duties are the same as the duties performed by the hourly-paid sales associates, whom are classified by Defendants as non-exempt.

107. Plaintiffs and the Class Members were closely supervised by their district managers. District managers were responsible for the overall performance of Defendants' Lacrosse Unlimited stores.

108. Plaintiffs and the Class Members did not have any independent discretionary authority to deviate from Defendants' policies, practices, and procedures.

109. Plaintiffs and the Class Members did not have authority (a) to create or implement management policies, practices, and procedures for Defendants; (b) to commit Defendants in matters having significant financial impact; (c) to set employees' wages; (d) to determine how many labor hours could be allocated to their store; or (e) to hire, fire, or promote employees.

PLAINTIFFS' FACTUAL ALLEGATIONS

Robert Laurie

110. Robert Laurie was an employee of Defendants, working under their direct supervision.

111. Robert Laurie was employed by Defendants from in or about November 2012 until on or about February 2013 as an ASM at the Lacrosse Unlimited store located in Manhasset, New York.

112. Robert Laurie is a covered employee within the meaning of the FLSA and NYLL.

113. During most workweeks between November 2012 and February 2013, Robert Laurie worked more than 50 hours per week.

114. Defendants failed to compensate Robert Laurie for time worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular rate, from November 2012 through February 2013.

115. Defendants failed to furnish Robert Laurie with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

116. Upon information and belief, Defendants did not keep accurate records of hours worked by Robert Laurie.

Eric Stein

117. Eric Stein was an employee of Defendants, working under their direct supervision.

118. Eric Stein was employed by Defendants from in or about December 2012 until on or about March 2013 as an ASM at the Lacrosse Unlimited store located in Dallas, Texas.

119. Eric Stein is a covered employee within the meaning of the FLSA.

120. During most workweeks between December 2012 and March 2013, Eric Stein worked more than 50 hours per week.

121. Defendants failed to compensate Robert Laurie for time worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular rate, from December 2012 through March 2013.

122. Defendants failed to furnish Eric Stein with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

123. Upon information and belief, Defendants did not keep accurate records of hours worked by Eric Stein.

Jason Vergara

124. Jason Vergara was an employee of Defendants, working under their direct supervision.

125. Jason Vergara was employed by Defendants from on or about October 2010 until on or about January 2011 as an ASM at the Lacrosse Unlimited located in Huntington, New York.

126. Jason Vergara also occasionally worked as a floating ASM for Defendants from on or about March 2012 until on or about May 2012 at the Lacrosse Unlimited store located in Annapolis, Maryland as well as in the Lacrosse Unlimited stores in Vienna, Virginia and Alexandria, Virginia.

127. Robert Laurie is a covered employee within the meaning of the FLSA and NYLL.

128. During most workweeks between October 2010 and January 2011 and between March 2012 and May 2012, Jason Vergara worked more than 50 hours per week.

129. Defendants failed to compensate Jason Vergara for time worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular rate, throughout the entire term of his employment with Defendants.

130. Defendants failed to furnish Jason Vergara with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

131. Upon information and belief, Defendants did not keep accurate records of hours worked by Jason Vergara.

AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS AND THE FLSA COLLECTIVE
FOR FAILURE TO PAY OVERTIME
AN FLSA VIOLATION

132. Plaintiffs Robert Laurie and Eric Stein, on behalf of themselves and the FLSA Collective, and Jason Vergara, individually, reallege and incorporate by reference all allegations in all preceding paragraphs.

133. Plaintiffs and the members of the FLSA Collective are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

134. Defendants employed Plaintiffs and the members of the FLSA Collective for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs and the FLSA Collective for the time worked in excess of 40 hours per week, at a rate of at least 1 and ½ times his regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

135. Defendants failed to keep accurate records of time worked by Plaintiffs and the FLSA Collective.

136. Defendants' violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional.

137. Defendants did not make a good faith effort to comply with the FLSA with respect to its compensation to Plaintiffs and the FLSA Collective.

138. Because Defendants' violations of the FLSA were willful, a 3 year statute of limitations applies, pursuant to 29 U.S.C. § 255.

139. Plaintiffs have expressed their consent to make these claims against the Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b).

140. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and the Defendants are indebted to them in the amount of the unpaid overtime compensation, together with interest, liquidated damages, attorneys' fees, and costs in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE NEW YORK PLAINTIFFS ROBERT LAURIE AND
JASON VERGARA AND THE NEW YORK CLASS
FOR FAILURE TO PAY OVERTIME
A NYLL VIOLATION

141. The New York Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

142. Defendants engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

143. At all times relevant, the New York Plaintiffs and members of the New York Class, have been employees and Defendants have been their employer within the meaning of the NYLL.

144. The New York Plaintiffs and the New York Class members are covered by the NYLL.

145. Defendants failed to pay the New York Plaintiffs and the members of the New York Class overtime wages to which they are entitled under the NYLL Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

146. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by the New York Plaintiffs and members of the New York Class.

147. Defendants' violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

148. Due to Defendants' violations of the NYLL, the New York Plaintiffs and members of the New York Class are entitled to recover from Defendants their unpaid overtime, reasonable attorneys' fees and costs of the action, liquidated damages as provided for by NYLL Article 6 § 198, and pre-judgment and post-judgment interest.

AS AND FOR THE THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFFS ROBERT LAURIE AND JASON VERGARA
AND THE NEW YORK CLASS
FOR VIOLATION OF NOTICE AND RECORD-KEEPING REQUIREMENTS
A NYLL VIOLATION

149. Plaintiffs Robert Laurie and Jason Vergara, on behalf of themselves and the New York Class reallege and incorporate by reference all allegations in all preceding paragraphs

150. Defendants failed to supply Plaintiffs Robert Laurie and Jason Vergara and members of the New York Class a notice as required by N.Y. Lab. Law § 195, in English or in the language identified by Plaintiffs Robert Laurie and Jason Vergara and members of the New York Class, as their primary language, containing Plaintiffs' and members of the New York Class' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with N.Y. Lab. Law §

191; the name of the employer; any “doing business as” names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

151. Defendants failed to supply Plaintiffs Robert Laurie and Jason Vergara and members of the New York Class with an accurate statement of wages as required by N.Y. Lab. Law § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

152. Due to Defendants’ violations of N.Y. Lab. Law § 195, Plaintiffs Robert Laurie and Jason Vergara and members of the New York Class are entitled to damages of fifty dollars for each workweek that Defendants failed to provide each Plaintiff and each member of the New York Class with a wage notice, or a total of twenty-five hundred dollars, and damages of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs Robert Laurie and Jason Vergara and members of the New York Class with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198, reasonable attorneys’ fees, costs, and injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, seek the following relief:

A. That, at the earliest possible time, Plaintiff Robert Laurie be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have at any time during the 3 years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, were employed by Defendants as ASMs at all of Defendants' Lacrosse Unlimited stores. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

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

C. Unpaid overtime pay and liquidated damages permitted by law pursuant to the NYLL;

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

E. Designation of Plaintiffs Robert Laurie and Eric Stein as Class Representatives of the FLSA Class, and counsel of record as Class Counsel for the FLSA Class;

F. Designation of Plaintiffs as Class Representatives of the New York Class, and counsel of record as Class Counsel for the NY Class;

G. Issuance of a declaratory judgment that the practices complained of in this Class and Collective Action Complaint are unlawful under appropriate state law;

H. Pre-judgment interest and post-judgment interest as provided by law;

I. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing its unlawful practices;

J. Attorneys' fees and costs of the action;

K. Damages of fifty dollars for Plaintiffs and each NY Class Member for each workweek that Defendants failed to provide Plaintiffs with a wage notice, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198;

L. Damages of one hundred dollars for Plaintiffs and each NY Class Member for each workweek that Defendants failed to provide Plaintiffs with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198;

M. An injunction requiring Defendants to cease the unlawful activity described herein pursuant to N.Y. Lab. Law § 190 *et seq.*;

N. Such other injunctive and equitable relief as this Court shall deem just and proper;

O. Appropriate monetary relief for lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d); and

P. Liquidated damages relating to lost wages, as provided for by FLSA § 216(b) and NYLL § 215(d).

Dated: Melville, New York
September 29, 2014

Your, etc.,

SHULMAN KESSLER LLP

By: /s/ Marijana Matura

Troy L. Kessler
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