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

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| **CHANDRAKALLI SUKHNANDAN, FARHANA AKTER, TARA SINGH-PALTOO, and SONIA BAILEY** on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>**ROYAL HEALTH CARE OF LONG ISLAND LLC d/b/a ROYAL HEALTH CARE,**<br><br>Defendant. | **12 Civ. 4216 (WHP)(RLE)**<br><br>**FIRST AMENDED CLASS ACTION COMPLAINT** |

Plaintiffs, CHANDRAKALLI SUKHNANDAN, FARHANA AKTER, TARA SINGH-PALTOO, and SONIA BAILEY (collectively "Plaintiffs") on behalf of themselves and all others similarly situated, by and through their attorneys SHULMAN KESSLER LLP and FITAPELLI & SCHAFFER, LLP complaining of the Defendant, allege as follows:

## INTRODUCTION

1. This lawsuit seeks to recover unpaid overtime compensation for Plaintiffs and their similarly situated co-workers who have been employed by ROYAL HEALTH CARE OF LONG ISLAND, LLC d/b/a ROYAL HEALTH CARE (hereinafter referred to as "Royal Health Care" or "Defendant").

2. Royal Health Care is a healthcare technology and services company that operates in New York.

3. Throughout the relevant period, Plaintiffs have been employed by Defendant as Marketing Representatives and/or Retention Representatives.

4. While employed by Defendants, Plaintiffs consistently worked over 40 hours per

week without ever receiving premium overtime pay. Throughout the relevant period, it was Defendant's policy 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, Defendant misclassified the Marketing Representative and Retention Representative positions as exempt from the overtime provisions of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL").

5. Marketing Representatives at Royal Health Care are deployed to one of Defendant's fixed locations in order to enroll eligible individuals in a Medicaid program. Defendants require Marketing Representatives to obtain a minimum of 20 applications per week as well as consistently renew existing members. In order to meet these daunting productivity requirements, as well as accomplish their other responsibilities, Marketing Representatives are often required to work in excess of 40 hours per week.

6. Retention Representatives at Royal Health Care divide their time between fieldwork and office hours. Primarily, Retention Representatives are responsible for contacting individuals who need to recertify or submit updated documents in order to maintain their benefits, as well as enroll new applicants. Defendants require Retention Representatives to recertify 25 members per week as well as obtain 1 or 2 new applications per week. In order to meet these daunting productivity requirements, as well as accomplish their other responsibilities, Retention Representatives are often required to work in excess of 40 hours per week.

7. At Royal Health Care, the job duties, responsibilities and hours of Marketing Representatives and Retention Representatives are similar. In that respect, both job titles require that Plaintiffs submit new applications on a weekly basis as well as retain/re-certify existing members. Moreover, both positions routinely make phone calls to new and existing members,

schedule appointments and make home visits. Furthermore, many individuals have been employed by Defendant as both Marketing Representatives and Retention Representatives.

8. Plaintiffs bring this action on behalf of themselves and similarly situated current and former Marketing Representatives and/or Retention Representatives of Royal Health Care who elect to opt-in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA") 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 Defendant that have been deprived Plaintiffs and others similarly situated of their lawfully earned wages.

9. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former Marketing Representatives and/or Retention Representatives of Royal Health Care located in the State of New York pursuant to the Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law ("NYLL") Article 6 §§ 190 *et seq.*, and Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

## JURISDICTION & VENUE

10. 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.

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

12. Defendant does business in the State of New York, within the Southern District of New York, maintaining its principal place of business at 521 Fifth Avenue, 3rd Floor, New York, New York 10173.

13. Accordingly, this action properly lies in the Southern District of New York,

pursuant to 28 U.S.C. § 1391.

## THE PARTIES

### Plaintiffs

**Chandrakalli Sukhnandan**

14. Plaintiff Chandrakalli Sukhnandan ("Sukhnandan") is a resident of the County of Queens, State of New York.

15. At all times relevant to the Complaint, Sukhnandan was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

16. At all times relevant, Sukhnandan has been employed by Defendant as a Marketing Representative.

17. A written consent form for Sukhnandan was filed with the original Class Action Complaint.

**Farhana Akter**

18. Plaintiff Farhana Akter ("Akter") is a resident of the County of Queens, State of New York.

19. At all times relevant to the Complaint, Akter was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

20. At all times relevant, Akter has been employed by Defendant as a Marketing Representative.

21. A written consent form for Akter was filed with the original Class Action Complaint.

**Tara Singh-Paltoo**

22. Plaintiff Tara Singh-Paltoo ("Singh-Paltoo") is a resident of the County of

Queens, State of New York.

23. At all times relevant to the Complaint, Singh-Paltoo was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

24. At all times relevant, Singh-Paltoo has been employed by Defendant as a Marketing Representative.

25. A written consent form for Singh-Paltoo was filed with the original Class Action Complaint.

**Sonia Bailey**

26. Plaintiff Sonia Bailey ("Bailey") is a resident of the County of Queens, State of New York.

27. At all times relevant to the Complaint, Bailey was an "employee" within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e), and NYLL § 190(2).

28. At all times relevant, Bailey has been employed by Defendant as a Marketing Representative and a Retention Representative.

29. A written consent form for Bailey was previously filed on ECF. ECF No. 20.

**Defendant**

30. Upon information and belief, Royal Health Care was and still is a domestic limited liability corporation, organized and existing pursuant to the laws of the State of New York.

31. Defendant maintains its principal place of business at 521 Fifth Avenue, 3rd Floor, New York, New York.

32. Upon information and belief, Royal Health Care maintains control, oversight, and direction over its operations and employment practices.

33. At all times hereinafter mentioned, Defendant 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).

34. 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).

35. 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).

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

37. Defendant applies the same employment policies, practices, and procedures to all Marketing Representatives and Retention Representatives throughout New York, including policies, practices, and procedures with respect to payment of overtime compensation.

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

## FLSA COLLECTIVE ACTION CLAIMS

39. Upon information and belief, there are approximately more than one hundred (100) current and former marketing representatives that are similarly situated to the Plaintiffs who have been denied overtime compensation.

40. Plaintiffs bring the First Cause of Action, on behalf of themselves and all similarly situated persons who have worked for Defendant as Marketing Representatives and/or

Retention Representatives, who elect to opt-in to this action.

41. Plaintiffs represent other Marketing Representatives and/or Retention Representatives, and are acting on behalf of Defendant's current and former Marketing Representatives and Retention Representatives' interests as well as their own interests in bringing this action.

42. Plaintiffs 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 Marketing Representatives and/or Retention Representatives who are currently or have been employed by the defendant and who worked greater than forty(40) hours per week (hereinafter referred to as the "FLSA Collective"), at any time during the three (3) years prior to the filing of their respective consent forms (hereinafter referred to as the "FLSA Collective Class Period").

43. Defendant was aware or should have been aware that the law required it to pay non-exempt employees, including Plaintiffs and the FLSA Collective, an overtime premium of time and one half of all work-hours it suffered or permitted in excess of 40 per workweek. Upon information and belief, Defendant applied the same unlawful policies and practices to its Marketing Representatives and/or Retention Representatives throughout the State of New York.

44. The FLSA Collective is readily identifiable and locatable through use of the defendant's records. The FLSA Collective 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, the FLSA Collective, who 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.

**FEDERAL RULE OF CIVIL PROCEDURE RULE 23**
**NEW YORK CLASS ALLEGATIONS**

45. Plaintiffs bring the Second Cause of Action on their own behalf and as a class action, on behalf of those similarly situated, pursuant to Fed R. Civ. P. 23(a) and (b). The New York Rule 23 Class is defined as:

> All Marketing Representatives and/or Retention Representatives who are currently, or have been employed by the Defendant, in the State of New York at any time from May 29, 2006 to the entry of the judgment in the case, who worked greater than forty (40) hours per week (hereinafter referred to as the "New York Class" and the "New York Class Period," respectively.)

46. The persons in the New York Class are so numerous that joinder of all members is impracticable. Although, the precise number of such persons is unknown, and facts on which the calculation of that number can be based are presently within the sole control of Defendant.

47. Upon information and belief, the size of the New York Class is at least one hundred (100) individuals.

48. The Second Cause of Action is properly maintainable as a class action under Fed. R. Civ. Pro. 23(b)(3). There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

a. whether the Defendant failed to keep accurate time records for all hours worked by the New York Class Representatives and the New York Class;

b. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

c. whether the Defendant failed to pay proper compensation to Plaintiffs and the Rule 23 Class for hours in excess of 40 per workweek in violation of and within the meaning of the N.Y. Lab. Law Article 6, § 190 *et seq.* and the supporting New

York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142;

d. the nature and extent of New York Class-wide injury and the appropriate measure of damages sustained by the New York Class Representatives and the New York Class;

e. whether Defendant acted willfully or with reckless disregarding in its failure to pay the New York Class Representatives and the New York Class; and

f. the nature and extent of class-wide injury and the measure of damages for those injuries.

49. The New York Class Representatives fairly and adequately protects the interests of the New York Class and have no interests antagonistic to the class. The named Plaintiffs are represented by attorneys who are experienced and competent in both class litigation and employment litigation.

50. A class is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual Plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against the corporate Defendant. The damages sustained by individual class members are small, compared to the expense and burden of individual prosecution of this litigation. Class action treatment will obviate unduly duplicative litigation and the possibility of inconsistent judgments.

51. Further, the New York Class Representatives and the New York Class have been equally affected by the Defendant's failure to pay proper wages. Moreover, members of the New York Class still employed by the Defendant may be reluctant to raise individual claims for fear of retaliation.

52. Defendant has acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class was a whole.

53. Plaintiffs' claims are typical of those of the New York Class. Plaintiffs and the other New York Class members were subjected to the Defendant's policies, practices, programs, procedures, protocols and plans alleged herein concerning the failure to pay proper wages and the failure to keep adequate records. The job duties of the named Plaintiffs are typical of those of the class members.

54. A class action is superior to other available methods for the fair and efficient adjudication of this litigation- particularly in the context of wage litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate Defendant. The members of the New York Class have been damaged and are entitled to recovery as a result of Defendant's 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. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

## CLASS-WIDE FACTUAL ALLEGATIONS

55. Plaintiffs and the members of the Rule 23 Class and the FLSA Collective (collectively "Class Members") have been victims of Defendant's common policy and plan that has violated their rights under the FLSA and the NYLL by denying them overtime compensation. At all times relevant, Defendant's unlawful policy and pattern or practice has been willful.

56. All of the work performed by Class Members was assigned by Defendant and/or Defendant was aware of all the work that Plaintiffs and the Class Members performed.

57. Upon information and belief, Defendant has a policy and pattern or practice to require the Plaintiffs and Class Members to continue working after recording a maximum of eight (8) hours of work per workday in an effort to avoid paying overtime pursuant to the FLSA and NYLL.

58. Defendant failed to pay Plaintiffs and Class Members time and a half for all hours worked over forty in a work week in violation of the FLSA and NYLL.

59. As part of its regular business practice, Defendant intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy that violates the FLSA and NYLL. Defendant's policy and pattern or practice includes but is not limited to:

a. Willfully failing to record all of the time that its employees, including Plaintiffs and Class Members, have worked for the benefit of Defendant;

b. Willfully failing to keep payroll records as required by the FLSA and NYLL; and,

c. Willfully failing to pay its employees, including Plaintiffs and Class Members, overtime wages for hours that they worked in excess of 40 hours per week.

60. Defendant was or should have been aware that the FLSA and NYLL required it to pay its Marketing Representatives and/or Retention Representatives premium overtime pay for hours worked in excess of 40 per week.

61. Defendant's failure to pay Plaintiffs and the Class Members overtime wages for their work in excess of 40 hours per week was willful, intentional, and in bad faith.

62. Defendant's unlawful conduct has been widespread, repeated, and consistent.

## PLAINTIFFS' FACTUAL ALLEGATIONS

### Chandrakalli Sukhnandan

63. Sukhnandan was employed by the Defendant from in or about October 2004 until September 2011 as a Marketing Representative.

64. Sukhnandan was an employee of the Defendant, working under its direct supervision.

65. At all times hereinafter mentioned, Sukhnandan was required to be paid overtime pay at the statutory rate of time and one-half her regular rate of pay after she had worked 40 hours in a workweek.

66. Sukhnandan frequently worked over 40 hours per week, with a maximum of approximately 75 hours per week.

67. Defendant failed to compensate Sukhnandan for time worked in excess of 40 hours per week at a rate of at least one and one-half times her regular hourly rate, throughout the entire term of her employment with the Defendant.

68. Upon information and belief, Defendant did not keep accurate records of hours worked by Sukhnandan.

**Farhana Akter**

69. Akter was employed by the Defendant from in or about 2008 until September 2011 as a Marketing Representative.

70. Akter was an employee of the Defendant, working under its direct supervision.

71. At all times hereinafter mentioned, Akter was required to be paid overtime pay at the statutory rate of time and one-half her regular rate of pay after she worked 40 hours in a workweek.

72. Akter frequently worked over 40 hours per week, with a maximum of approximately 75 hours per week.

73. Defendant failed to compensate Akter for time worked in excess of 40 hours per week at a rate of at least one and one-half times her regular hourly rate, throughout the entire

term of her employment with the Defendant.

74. Upon information and belief, Defendant did not keep accurate records of hours worked by Akter.

**Tara Singh-Paltoo**

75. Singh-Paltoo was employed by the Defendant from in or about December 2007 until September 2008, as a Marketing Representative.

76. Singh-Paltoo was an employee of the Defendant, working under its direct supervision.

77. At all times hereinafter mentioned, Singh-Paltoo was required to be paid overtime pay at the statutory rate of time and one-half her regular rate of pay after she had worked 40 hours in a workweek.

78. Singh-Paltoo frequently worked over 40 hours per week, with a maximum of approximately 75 hours per week.

79. Defendant failed to compensate Singh-Paltoo for time worked in excess of 40 hours per week at a rate of at least one and one-half times her regular hourly rate, throughout the entire term of her employment with the Defendant.

80. Upon information and belief, Defendant did not keep accurate records of hours worked by Singh-Paltoo.

**Sonia Bailey**

81. Bailey was employed by the Defendant from in or about June 20, 1995 until November 4, 2010, as a Marketing Representative and a Retention Representative.

82. From in or around 1995 until mid 2000, Bailey was employed as a Marketing Representative.

83. From in or around six months in 2000, Bailey was employed as a Retention Representative.

84. From in or around the end of 2000 until January 2010, Bailey was employed as a Marketing Representative.

85. From in or around January 2010 until November 4, 2010, Bailey was employed as a Retention Representative.

86. Bailey was an employee of the Defendant, working under its direct supervision.

87. At all times hereinafter mentioned, Bailey was required to be paid overtime pay at the statutory rate of time and one-half her regular rate of pay after she had worked 40 hours in a workweek.

88. Sukhnandan frequently worked over 40 hours per week, with a maximum of approximately 65 hours per week.

89. Defendant failed to compensate the Bailey for time worked in excess of forty 40 hours per week at a rate of at least one and one-half times her regular hourly rate, throughout the entire term of her employment with the Defendant.

90. Upon information and belief, Defendant did not keep accurate records of hours worked by Bailey.

**FIRST CAUSE OF ACTION**
**Fair Labor Standards Act – Overtime Wages**
**(Brought on behalf of Plaintiffs and the FLSA Collective)**

91. Plaintiffs, on behalf of themselves and the FLSA Collective, Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

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

93. Defendant employed Plaintiffs and FLSA Class Members for workweeks longer

than 40 hours and willfully failed to compensate the Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least one and one-half times the regular hourly rate, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

94. Defendant employed Plaintiffs and the members of the FLSA Collective as an employer and/or a joint employer.

95. Defendant failed to keep accurate records of time worked by Plaintiff and the FLSA Collective.

96. Defendant's violations of the FLSA, as described in this Amended Class Action Complaint, have been willful and intentional.

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

98. Because Defendant's violations of the FLSA were willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

99. The Plaintiffs 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). 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, together with interest, liquidated damages, attorneys' fees, and costs in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**
**New York Labor Law Article 19 – Unpaid Overtime**
**(Brought on behalf of Plaintiffs and the members of the NY Class)**

100. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

101. Defendant employed Plaintiffs and NY Class Members for workweeks longer than 40 hours and willfully failed to compensate the Plaintiffs for the time worked in excess of 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.

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

103. Defendant failed to keep, make, preserve, maintain and furnish accurate records of time worked by Plaintiffs and Class Members.

104. Defendant has a policy and practice of refusing to pay overtime compensation to the Plaintiffs, the New York Class Representatives, and the New York Class.

105. Defendant's failure to pay overtime compensation to the Plaintiffs, the New York Class Representatives and the New York Class, was willful within the meaning of N.Y. Lab. Law § 663.

106. 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.

107. 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, individually and on behalf of all other similarly situated persons, seeks for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this class action, or that the Court issue such notice, to all persons who are presently, or have at any time during the six years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendant as Marketing Representatives, Retention Representatives or similarly situated positions. 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 as representatives of the Rule 23 Classes, and counsel of record as Class Counsel;

F. Issuance of a declaratory judgment that the practices complained of in this Amended Class Action Complaint are unlawful under the NYLL.

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

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

I. Attorneys' fees and costs of the action;

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

Dated: Melville, New York
September 19, 2012

Respectfully submitted,

By: _____

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