SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

FRANK ROBINSON, on behalf of himself and all others similarly situated, and HENRY ALCANTARA, BARRY ALKINS, RAFAEL BOITER, MAURICE DESRIVIERES, JAY GILBERT, ROGER JONES, ROUSSO MEDE, JOSE PERALTA, NIEVE QUEZADA, MAXIMINO ROSA, and TYRELL STEWART, individually, Plaintiffs, - against - BIG CITY YONKERS, INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, KKLDS, INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, 20-15 Atlantic Corp. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, 450 CONCORD AVENUE CORP. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, ALL PARTS, INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, AUTOSTAR AUTOMOTIVE WAREHOUSE, INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, D A L HOLDING CO., INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, GLENWOOD AUTOPARTS, CORP. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, and QPBC INC. d/b/a BIG CITY AUTOMOTIVE WAREHOUSES, Defendants.	Index No.: 600159/2016 **FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

Plaintiffs Frank Robinson, on behalf of himself and all others similarly situated, and Henry Alcantara, Barry Alkins, Rafael Boiter, Maurice Desrivieres, Jay Gilbert, Roger Jones, Rousso Mede, Jose Peralta, Nieve Quezada, Maximino Rosa, and Tyrell Stewart, individually, by and through their attorneys Shulman Kessler LLP, complaining of the Defendants Big City Yonkers, Inc. d/b/a Big City Automotive Warehouses, KKLDS, Inc. d/b/a Big City Automotive Warehouses, 20-15 Atlantic Corp. d/b/a Big City Automotive Warehouses, 450 Concord Avenue Corp. d/b/a Big City Automotive Warehouses, All Parts, Inc. d/b/a Big City Automotive

Warehouses, Autostar Automotive Warehouses, Inc. d/b/a Big City Automotive Warehouses, D A L Holding Co., Inc. d/b/a Big City Automotive Warehouses, Glenwood Autoparts, Corp. d/b/a Big City Automotive Warehouses, and QPBC, Inc. d/b/a Big City Automotive Warehouses (collectively hereinafter referred to as "Defendants" or "Big City"), allege as follows as for their First Amended Complaint:

PRELIMINARY STATEMENT

1. This lawsuit seeks to recover unpaid overtime and minimum wage compensation for Plaintiffs and their similarly situated co-workers who have worked for Defendants in the State of New York as delivery drivers, based upon Defendants' violation of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. § 201, *et seq.* and appropriate rules and regulations.

2. This lawsuit also seeks to recover unpaid overtime and minimum wage compensation, based on Big City's violation of the New York Labor Law ("NYLL" or "N.Y. Lab. Law") and appropriate rules and regulations.

3. Big City requires its delivery drivers to deliver parts to its warehouses located throughout the State of New York and the State of New Jersey, as well as to other mechanics, including but not limited to auto body shops, and requires Plaintiffs to work in excess of 40 hours per workweek.

4. Big City operates a business enterprise consisting of 15 auto parts warehouses throughout the State of New York and the State of New Jersey.

5. While employed by Big City, Plaintiffs consistently worked over 40 hours per week without receiving premium overtime pay for all the hours they worked. Throughout the

relevant period, it was Big City's policy to deprive Plaintiffs of all of their earned overtime wages in violation of the FLSA and the NYLL.

6. In order to avoid paying Plaintiffs overtime premiums for all of the hours Plaintiffs worked in excess of 40 per workweek, Big City misclassified its delivery drivers as exempt employees and independent contractors.

7. Big City operates a common business enterprise consisting of 15 auto part warehouses throughout the State of New York. Big City shares its delivery drivers throughout its warehouses.

8. While employed by Big City, Plaintiffs were denied a minimum wage due to the unlawful kick-backs Plaintiffs were required to pay in order to complete their duties for Big City, including but not limited to expenses related to their vehicle, gasoline, and other travel expenses. Throughout the relevant period, it was Big City's policy to subject Plaintiffs to kick-backs and thereby deprive Plaintiffs of a minimum wage in violation of the FLSA and the NYLL.

9. Big City failed to track its delivery drivers' hours worked.

10. Plaintiff Frank Robinson (the "FLSA Class Representative") brings this action on behalf of himself and all similarly situated current and former delivery drivers of Defendants pursuant to the FLSA.

11. Plaintiff Frank Robinson (the "New York Class Representative") also brings this action on behalf of himself and all similarly situated former drivers of Big City who worked in New York pursuant to Article 9 of the New York Civil Practice Law and Rules to remedy violations of the NYLL, Article 19, §§ 650 *et seq.*, and Article 6, §§ 195 and 198, and the supporting New York State Department of Labor regulations.

JURISDICTION & VENUE

12. This Court has jurisdiction over this matter pursuant to the forum selection clause contained in each Plaintiff's respective Operator Agreement with Defendants.

13. This Court also has jurisdiction over this matter pursuant to N.Y. Lab. Law, Article 9, §§ 190 *et seq*.

THE PARTIES

Plaintiffs

14. Frank Robinson is a resident of Bronx County, State of New York.

15. At all times relevant to this First Amended Complaint, Frank Robinson 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).

16. At all times relevant, Frank Robinson was employed by Defendants as a delivery driver.

17. Frank Robinson expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

18. Henry Alcantara is a resident of Bronx County, State of New York.

19. At all times relevant to this First Amended Complaint, Henry Alcantara 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).

20. At all times relevant, Henry Alcantara was employed by Defendants as a delivery driver.

21. Henry Alcantara expressed his consent to make these claims against Defendants

by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

22. Barry Alkins is a resident of Kings County, State of New York.

23. At all times relevant to this First Amended Complaint, Barry Alkins 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).

24. At all times relevant, Barry Alkins was employed by Defendants as a delivery driver.

25. Barry Alkins expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

26. Rafael Boiter is a resident of Bronx County, State of New York.

27. At all times relevant to this First Amended Complaint, Rafael Boiter 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).

28. At all times relevant, Rafael Boiter was employed by Defendants as a delivery driver.

29. Rafael Boiter expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

30. Maurice Desrivieres is a resident of Kings County, State of New York.

31. At all times relevant to this First Amended Complaint, Maurice Desrivieres 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).

32. At all times relevant, Maurice Desrivieres was employed by Defendants as a delivery driver.

33. Maurice Desrivieres expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

34. Jay Gilbert is a resident of Bronx County, State of New York.

35. At all times relevant to this First Amended Complaint, Jay Gilbert 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).

36. At all times relevant, Jay Gilbert was employed by Defendants as a delivery driver.

37. Jay Gilbert expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

38. Roger Jones is a resident of Westchester County, State of New York.

39. At all times relevant to this First Amended Complaint, Roger Jones 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).

40. At all times relevant, Roger Jones was employed by Defendants as a delivery driver.

41. Roger Jones expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

42. Rousso Mede is a resident of Westchester County, State of New York.

43. At all times relevant to this First Amended Complaint, Rousso Mede 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).

44. At all times relevant, Rousso Mede was employed by Defendants as a delivery driver.

45. Rousso Mede expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

46. Jose Peralta is a resident of Bronx County, State of New York.

47. At all times relevant to this First Amended Complaint, Jose Peralta 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).

48. At all times relevant, Jose Peralta was employed by Defendants as a delivery driver.

49. Jose Peralta expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

50. Nieve Quezada is a resident of Bronx County, State of New York.

51. At all times relevant to this First Amended Complaint, Nieve Quezada 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).

52. At all times relevant, Nieve Quezada was employed by Defendants as a delivery driver.

53. Nieve Quezada expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

54. Maximo Rosa is a resident of Westchester County, State of New York.

55. At all times relevant to this First Amended Complaint, Maximo Rosa 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).

56. At all times relevant, Maximo Rosa was employed by Defendants as a delivery driver.

57. Maximo Rosa expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (See NYSCEF Doc. No. 1).

58. Tyrell Stewart is a resident of Orange County, State of New York.

59. At all times relevant to this First Amended Complaint, Tyrell Stewart 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).

60. At all times relevant, Tyrell Stewart was employed by Defendants as a delivery driver.

61. Tyrell Stewart expressed his consent to make these claims against Defendants by filing a written consent form, pursuant to 29 U.S.C. § 216(b). The consent form was filed as Exhibit A to the Class and Collective Action Complaint. (*See* NYSCEF Doc. No. 1).

Defendants

62. 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).

63. 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.

64. Defendants applied the same employment policies, practices, and procedures to all delivery drivers throughout the State of New York, including policies, practices, and procedures with respect to payment of overtime compensation.

Defendant Big City Yonkers

65. Upon information and belief, Defendant Big City Yonkers, Inc. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

66. Defendant Big City Yonkers, Inc. was and still is doing business as Big City Automotive Warehouses.

67. Defendant Big City Yonkers Inc. maintains its principal place of business at 54 West John Street, Hicksville, New York.

68. Defendants maintain their primary office at Defendant Big City Yonkers Inc.'s location at 54 West John Street, Hicksville, New York. *See* http://bigcityautomotive.com/index.htm (last accessed Jan. 4, 2016).

69. Defendants also maintain a warehouse location at 44 Runyon Avenue, Yonkers, New York, which Defendants also refer to as the "Big City of Yonkers" location. *See* http://www.bigcityautomotive.com/news.htm (last accessed Jan. 4, 2016).

70. Upon information and belief, Defendant Big City Yonkers, Inc. maintains control, oversight, and direction over its operations and employment practices.

71. At all times hereinafter mentioned, Defendant Big City Yonkers, Inc. 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).

72. Defendant Big City Yonkers, Inc. 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)(A)(i).

73. Defendant Big City Yonkers, Inc.'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).

74. At all times hereinafter mentioned, the activities of Defendant Big City Yonkers, Inc. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

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

76. Defendant Big City Yonkers, Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant KKLDS, Inc.

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

78. Defendant KKLDS, Inc. was and still is doing business as Big City Automotive Warehouses.

79. Defendant KKLDS, Inc. is located at 11 Cliff Street, New Rochelle, New York.

80. Defendants also maintain a warehouse location at Defendant KKLDS, Inc.'s location at 11 Cliff Street, New Rochelle, New York, which Defendants also refer to as the "Big City of New Rochelle" location. *See* http://www.bigcityautomotive.com/news.htm (last accessed Jan. 4, 2016).

81. Upon information and belief, Defendant KKLDS, Inc. maintains control, oversight, and direction over its operations and employment practices.

82. At all times hereinafter mentioned, Defendant KKLDS, Inc. 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).

83. Defendant KKLDS, Inc. 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)(A)(i).

84. Defendant KKLDS, Inc.'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).

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

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

87. Defendant KKLDS, Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage compensation.

Defendant 20-15 Atlantic Corp.

88. Upon information and belief, Defendant 20-15 Atlantic Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

89. Defendant 20-15 Atlantic Corp. was and still is doing business as Big City Automotive Warehouses.

90. Defendant 20-15 Atlantic Corp. is located at 2130 Bergen Street, Brooklyn, New York.

91. Defendants also maintain a warehouse location at Defendant 20-15 Atlantic Corp.'s location at 2130 Bergen Street, Brooklyn, New York, which Defendants also refer to as the "Danken-Autostar" location. *See* http://www.bigcityautomotive.com/news.htm (last accessed Jan. 4, 2016).

92. Upon information and belief, Defendant 20-15 Atlantic Corp. maintains control, oversight, and direction over its operations and employment practices.

93. At all times hereinafter mentioned, Defendant 20-15 Atlantic Corp. 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).

94. Defendant 20-15 Atlantic Corp. 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)(A)(i).

95. Defendant 20-15 Atlantic Corp.'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).

96. At all times hereinafter mentioned, the activities of Defendant 20-15 Atlantic Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

97. At all relevant times, Defendant 20-15 Atlantic Corp. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

98. Defendant 20-15 Atlantic Corp. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant 450 Concord Avenue Corp.

99. Upon information and belief, Defendant 450 Concord Avenue Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

100. Defendant 450 Concord Avenue Corp. was and still is doing business as Big City Automotive Warehouses.

101. Defendant 450 Concord Avenue Corp. has two locations at: (1) 1301 Inwood Ave, Bronx, New York; and (2) 745 E 145th Street, Bronx, New York.

102. Upon information and belief, Defendant 450 Concord Avenue Corp. maintains control, oversight, and direction over its operations and employment practices.

103. At all times hereinafter mentioned, Defendant 450 Concord Avenue Corp. 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).

104. Defendant 450 Concord Avenue Corp. 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)(A)(i).

105. Defendant 450 Concord Avenue Corp'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).

106. At all times hereinafter mentioned, the activities of Defendant 450 Concord Avenue Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

107. At all relevant times, Defendant 450 Concord Avenue Corp. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

108. Defendant 450 Concord Avenue Corp. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant All Parts, Inc.

109. Upon information and belief, Defendant All Parts, Inc. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

110. Defendant All Parts, Inc. was and still is doing business as Big City Automotive Warehouses.

111. Defendant All Parts, Inc. is located at 142 33rd Street, Brooklyn, New York.

112. Upon information and belief, Defendant All Parts, Inc. maintains control, oversight, and direction over its operations and employment practices.

113. At all times hereinafter mentioned, Defendant All Parts, Inc. 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).

114. Defendant All Parts, Inc. 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)(A)(i).

115. Defendant All Parts Inc'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).

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

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

118. Defendant All Parts, Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage compensation.

Defendant Autostar Automotive Warehouse, Inc.

119. Upon information and belief, Autostar Automotive Warehouse, Inc. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

120. Defendant Autostar Automotive Warehouse, Inc. was and still is doing business as Big City Automotive Warehouses.

121. Defendant Autostar Automotive Warehouse, Inc. is located at 161 Morgan Ave, Brooklyn, New York.

122. Upon information and belief, Defendant Autostar Automotive Warehouse, Inc. maintains control, oversight, and direction over its operations and employment practices.

123. At all times hereinafter mentioned, Autostar Automotive Warehouse, Inc. 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).

124. Defendant Autostar Automotive Warehouse, Inc. 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)(A)(i).

125. Defendant Autostar Automotive Warehouse, Inc.'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).

126. At all times hereinafter mentioned, the activities of Defendant Autostar Automotive Warehouse, Inc. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

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

128. Defendant Autostar Automotive Warehouse, Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant D A L Holding Corp.

129. Upon information and belief, Defendant D A L Holding Co., Inc. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

130. Defendant D A L Holding Co., Inc. was and still is doing business as Big City Automotive Warehouses.

131. Defendant D A L Holding Co., Inc. is located at 101-03 Northern Blvd, Corona, New York.

132. Upon information and belief, Defendant D A L Holding Co., Inc. maintains control, oversight, and direction over its operations and employment practices.

133. At all times hereinafter mentioned, Defendant D A L Holding Co., Inc. 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).

134. Defendant D A L Holding Co., Inc. 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)(A)(i).

135. Defendant D A L Holding Co., Inc.'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).

136. At all times hereinafter mentioned, the activities of Defendant D A L Holding Co., Inc. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

137. At all relevant times, Defendant D A L Holding Co., Inc. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including timekeeping, payroll and other employment practices that applied to them.

138. Defendant D A L Holding Co., Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant Glendwood Autoparts, Corp.

139. Upon information and belief, Defendant Glenwood Autoparts, Corp. was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

140. Defendant Glenwood Autoparts, Corp. was and still is doing business as Big City Automotive Warehouses.

141. Defendant Glenwood Autoparts, Corp. is located at 5701 Foster Avenue, Brooklyn, New York.

142. Upon information and belief, Defendant Glenwood Autoparts, Corp. maintains control, oversight, and direction over its operations and employment practices.

143. At all times hereinafter mentioned, Defendant Glenwood Autoparts, Corp. 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).

144. Defendant Glenwood Autoparts, Corp. 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)(A)(i).

145. Defendant Glenwood Autoparts, Corp.'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).

146. At all times hereinafter mentioned, the activities of Defendant 20-15 Atlantic Corp. constituted an "enterprise" within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

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

148. Defendant Glenwood Autoparts, Corp. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant QPBC, Inc.

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

150. Defendant QPBC, Inc. was and still is doing business as Big City Automotive Warehouses.

151. Defendant QPBC, Inc. is located at 27-19 44th Drive, Long Island City, New York.

152. Upon information and belief, QPBC, Inc. maintains control, oversight, and direction over its operations and employment practices.

153. At all times hereinafter mentioned, Defendant QPBC, Inc. 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).

154. Defendant QPBC, Inc. 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)(A)(i).

155. Defendant QPBC Inc'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).

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

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

158. Defendant QPBC, Inc. applied the same employment policies, practices, and procedures to all delivery drivers throughout State of New York, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendants

159. Defendants constitute a unified operation.

160. Defendants constitute a common enterprise.

161. Defendants have interrelated operations.

162. Defendants have common management.

163. Defendants have a centralized control of labor relations.

164. Defendants' centralized control of labor relations is located at 54 West John Street, Hicksville, New York.

165. Defendants have common ownership.

166. Defendants share employees, such as Plaintiffs.

167. Defendants commingled funds with each other.

168. Defendants share the same physical addresses in the State of New York.

169. Defendants constitute a single employer.

170. Defendants constitute an integrated enterprise.

171. At all relevant times, Defendants maintain control, oversight, and direction over Plaintiff and other employees, including timekeeping, payroll and other employment practices that applied to them.

172. Defendants all do business as Big City Automotive Warehouses.

173. Defendants advertised their locations as a single integrated enterprise on Defendants' website at: http://www.bigcityautomotive.com/news.htm (last accessed Jan. 4, 2016).

174. At all times hereinafter mentioned, Defendants 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).

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

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

177. Defendants 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

178. Plaintiff Frank Robinson, brings the First and Third Causes of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of himself and all similarly situated persons who work

or have worked for Defendants as a delivery driver within the last 3 years and who elect to opt-in to this action.

179. Upon information and belief, there are approximately more than 50 current and former delivery drivers that are similarly situated to the FLSA Class Representative who were denied overtime compensation and a minimum wage by Defendants.

180. The FLSA Class Representative represents other delivery drivers, and is acting on behalf of Defendants' current and former delivery drivers' interests as well as his own interests in bringing this action.

181. Defendants unlawfully required the FLSA Class Representative, Plaintiffs and all individuals employed as delivery drivers to work in excess of 40 hours per week without paying them overtime compensation at a rate of at least 1 and ½ times their regular hourly rate and the required minimum wage for all hours worked as a result of Defendants' delivery drivers being subjected to unlawful kick-backs.

182. The FLSA Class Representative seeks to proceed as a collective action with regard to the First and Third Causes of Action, pursuant to 29 U.S.C. § 216(b) on behalf of himself and the following class of persons:

> All delivery drivers who are currently or have performed delivery services for Defendants at any time during the 3 years prior to the filing of their respective consent forms (hereinafter the "FLSA Collective").

183. Big City was aware or should have been aware that the law required it to pay non-exempt employees, including the FLSA Class Representative, Plaintiffs and the FLSA Collective, an overtime premium of 1 and ½ times their regular rate of pay for all work-hours Big City suffered or permitted them to work in excess of 40 per workweek and that the FLSA

Class Representative and Plaintiffs were deprived of a minimum wage as a result of being subjected to unlawful wage kick-backs by Big City. Upon information and belief, Big City applied the same unlawful policies and practices to its delivery drivers throughout the State of New York.

184. The FLSA Collective is readily identifiable and locatable through the use of the Defendants' 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 Defendants.

NEW YORK CLASS ACTION ALLEGATIONS

185. Plaintiff Frank Robinson (hereinafter referred to as "the New York Class Representative") brings the Second, Fourth and Fifth Causes of Action on his own behalf and as a class action, pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of the following class of persons:

> All delivery drivers who are currently, or have performed delivery services for Big City, in the State of New York at any time during the 6 years prior to the filing of this Complaint, to the entry of the judgment in the case (hereinafter the "New York Class").

186. 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 Defendants.

187. Upon information and belief, the size of the New York Class is at least 100 individuals.

188. 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:

a. Whether Defendants failed to pay proper compensation for all work-hours and violated N.Y. Lab. Law, Articles 6 and 19, and the supporting New York State Department of Labor regulations;

b. whether Defendants failed to keep accurate time records for all hours worked by the New York Class Representative and the New York Class;

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

d. whether Defendants failed to pay the proper minimum wage for all hours worked to the New York Class Representative and the New York Class as a result of the unlawful kick-backs Plaintiffs and Class Members were subjected to by Defendants in violation of N.Y. Lab. Law § 198–b;

e. whether Defendants failed to furnish the New York Class Representative and New York Class with an accurate statement of, *inter alia*, wages, hours worked, and rates paid as required by N.Y. Lab. Law § 195;

f. whether Defendants failed to furnish the New York Class Representative and New York Class with the annual notice required by N.Y. Lab. Law § 195;

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

h. whether Defendants acted willfully or with reckless disregarding in their failure to pay the New York Class Representative and the New York Class; and

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

189. The New York Class Representative fairly and adequately protects the interests of the New York Class and has no interests antagonistic to the class. The New York Class Representative is represented by attorneys who are experienced and competent in both class litigation and employment litigation.

190. 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 an individual plaintiff lacks the financial resources to vigorously prosecute a lawsuit in federal court against 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.

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

192. Defendants have 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.

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

194. 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 Defendants' 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 Defendants' practices.

195. This action is properly maintainable as a class action under Article 9 of the New York Civil Practice Law and Rules.

COMMON FACTUAL ALLEGATIONS

196. Plaintiffs and the members of the FLSA Collective and New York Class (collectively "Class Members") have been victims of Defendants' common policy and plan that has violated their rights under the FLSA by requiring delivery drivers to work in excess of 40 hours per week and denying them overtime compensation and a minimum wage for all overtime hours worked. At all times relevant, Defendants' unlawful policy and pattern or practice has been willful.

197. All of the work performed by Class Members was assigned by Defendants and/or Defendants were aware of all the overtime work that Plaintiffs and Class Members performed.

198. Upon information and belief, Defendants have a policy and pattern or practice to require Plaintiffs and Class Members to work in excess of 40 hours per week.

199. Defendants failed to pay Plaintiffs and Class Members time and one half for all hours worked over 40 in a workweek in violation of the FLSA and NYLL.

200. Defendants received unlawful kick-backs from Plaintiffs and Class Members as a result of failing to requiring Plaintiffs to pay for expenses necessary to complete their duties

which included but were not limited to expenses relating to their vehicle, gasoline, and other travel expenses.

201. Defendants failed to furnish Plaintiffs and Class Members with an accurate statement of, *inter alia*, wages, hours worked, and rates paid as required by NYLL.

202. Defendants failed to furnish Plaintiffs and Class Members with the annual notice required by NYLL.

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

a. Willfully misclassifying their employees, including Plaintiffs and Class Members as exempt from the NYLL and FLSA;

b. Willfully failing to record all of the time that their employees, including Plaintiffs and Class Members, worked for the benefit of Defendants;

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

d. Willfully failing to pay their employees, including Plaintiffs and Class Members, overtime wages for all of the hours that they worked in excess of 40 per workweek;

e. Willfully failing to pay their employees, including Plaintiffs and Class Members, a minimum wage for all hours worked per workweek free of any unlawful kick-backs.

204. Defendants were or should have been aware that the FLSA and FLSA required them to pay their delivery drivers premium overtime pay for all hours worked in excess of 40 per week and to pay Plaintiffs at the minimum wage for all hours worked free of any unlawful kick-backs to Defendants.

205. Defendants' failure to pay Plaintiffs and Class Members overtime wages for their work in excess of 40 hours per week and a minimum wage was willful, intentional, and in bad faith.

206. Defendants' unlawful conduct was widespread, repeated, and consistent.

INDIVIDUAL FACTUAL ALLEGATIONS

Frank Robinson

207. Frank Robinson was employed by Defendants from in or about March 2012 through November 2015 as a delivery driver.

208. Frank Robinson signed an operator agreement with Defendant KKLDS, Inc. upon being hired by Defendants.

209. Frank Robinson was an employee of Defendants, working under their direct supervision.

210. Frank Robinson reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; and Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455.

211. Throughout Frank Robinson's employment for Defendants, each workweek he was required to report to work at Big City's New Rochelle location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

212. At all times hereinafter mentioned, Frank Robinson was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

213. During most workweeks between March 2012 and November 2015, Frank Robinson worked more than 58 hours per week for Defendants.

214. From March 2012 through November 2015, Defendants failed to compensate Frank Robinson for all of the time worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular hourly rate.

215. Frank Robinson was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

216. From March 2012 through November 2015, Frank Robinson was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Frank Robinson for travel expenses related to his employment for Defendants such as gasoline for deliveries.

217. Due to the improper kick-backs Frank Robinson was subjected to during his employment with Defendants, Defendants failed to compensate Frank Robinson the applicable minimum wage for all the hours worked per week.

218. Defendants failed to furnish Frank Robinson with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

219. Defendants failed to furnish Frank Robinson with an annual wage notice in 2012 through 2014 as was required by the NYLL.

220. Upon information and belief, Defendants did not keep accurate records of hours worked by Frank Robinson.

Henry Alcantara

221. Henry Alcantara was employed by Defendants from in or about June 2009 until in or about August 2015 as a delivery driver.

222. Henry Alcantara signed an operator agreement with Defendant Big City Yonkers, Inc. upon being hired by Defendants.

223. Henry Alcantara was an employee of Defendants, working under their direct supervision.

224. Henry Alcantara reported to various Big City locations for Defendants, including but not limited to: Defendants' Yonkers store, located at 44 Runyon Ave, Yonkers, New York 10710; Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; and Defendants' New Jersey store, located at 300 East Elizabeth Avenue, Linden, New Jersey, 07036.

225. Throughout Henry Alcantara's employment for Defendants, each workweek he was required to report to work at Big City's Yonkers location from approximately 8:00 a.m. until approximately 7:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 6:00 p.m. every Saturday.

226. At all times hereinafter mentioned, Henry Alcantara was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

227. During most workweeks between June 2009 and August 2015, Henry Alcantara worked more than 58 hours per week for Defendants.

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

229. Henry Alcantara was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

230. Henry Alcantara was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Henry Alcantara for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

231. Due to the improper kick-backs Henry Alcantara was subjected to during his employment with Defendants, Defendants failed to compensate Henry Alcantara the applicable minimum wage for all the hours worked per week.

232. Defendants failed to furnish Henry Alcantara with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

233. Defendants failed to furnish Henry Alcantara with a wage notice in 2012 through 2014 as was required by the NYLL.

234. Upon information and belief, Defendants did not keep accurate records of hours worked by Henry Alcantara.

Barry Alkins

235. Barry Alkins was employed by Defendants from in or about March 2015 until in or about September 2015 as a delivery driver.

236. Barry Alkins signed an operator agreement with Defendant 20-15 Atlantic Corp.

upon being hired by Defendants.

237. Barry Alkins was an employee of Defendants, working under their direct supervision.

238. Barry Alkins reported to various Big City locations for Defendants, including but not limited to: Defendants' Brooklyn store, located at 2130 Bergen Street, Brooklyn, New York 11233; Defendants' Brooklyn store, located at 84 18th Street, Brooklyn, New York 11234; Defendants' Brooklyn store, located at 5701 Foster Avenue, Brooklyn, New York 11232; Defendants' Brooklyn store, located at 161 Morgan Avenue, Brooklyn, New York 11237; Defendants' Queens Plaza store, located at 1206 38th Avenue, Long Island City, New York 11101; and Defendants' Queens store, located at 101-03 Northern Boulevard, Corona, New York 10368.

239. Throughout Barry Alkins's employment for Defendants, each workweek he was required to report to work at Big City's Bergen Street location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Saturday.

240. At all times hereinafter mentioned, Barry Alkins was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

241. During most workweeks between March 2015 and September 2015, Barry Alkins worked more than 58 hours per week for Defendants.

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

243. Barry Alkins was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

244. Barry Alkins was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Barry Alkins for travel expenses related to his employment for Defendants such as gasoline.

245. Due to the improper kick-backs Barry Alkins was subjected to during his employment with Defendants, Defendants failed to compensate Barry Alkins the applicable minimum wage for all the hours worked per week.

246. Defendants failed to furnish Barry Alkins with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

247. Upon information and belief, Defendants did not keep accurate records of hours worked by Barry Alkins.

Rafael Boiter

248. Rafael Boiter was employed by Defendants from in or about April 2013 through August 2015 as a delivery driver.

249. Rafael Boiter signed an operator agreement with Defendant Big City Yonkers, Inc. upon being hired by Defendants.

250. Rafael Boiter was an employee of Defendants, working under their direct supervision.

251. Rafael Boiter reported to various Big City locations for Defendants, including but not limited to: Defendants' Yonkers store, located at 44 Runyon Ave, Yonkers, New York

10710; Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455; Defendants' Queens Plaza store, located at 1306 38th Avenue, Long Island City, New York 11101; and Defendants' New Jersey store, located at 300 East Elizabeth Avenue, Linden, New Jersey, 07036.

252. Throughout Rafael Boiter's employment for Defendants, each workweek he was required to report to work at Big City's Yonkers location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

253. At all times hereinafter mentioned, Rafael Boiter was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

254. During most workweeks between April 2013 and August 2015, Rafael Boiter worked more than 58 hours per week for Defendants.

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

256. Rafael Boiter was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

257. Rafael Boiter was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Rafael Boiter for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

258. Due to the improper kick-backs Rafael Boiter was subjected to during his employment with Defendants, Defendants failed to compensate Rafael Boiter the applicable minimum wage for all the hours worked per week.

259. Defendants failed to furnish Rafael Boiter with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

260. Defendants failed to furnish Rafael Boiter with an annual wage notice in 2013 and 2014, as was required by the NYLL.

261. Upon information and belief, Defendants did not keep accurate records of hours worked by Rafael Boiter.

Maurice Desrivieres

262. Maurice Desrivieres was employed by Defendants from in or about October 2014 through September 2015 as a delivery driver.

263. Maurice Desrivieres signed an operator agreement with Defendant 20-15 Atlantic Corp. upon being hired by Defendants.

264. Maurice Desrivieres was an employee of Defendants, working under their direct supervision.

265. Maurice Desrivieres reported to various Big City locations for Defendants, including but not limited to: Defendants' Brooklyn store, located at 2130 Bergen Street, Brooklyn, New York 11233; Defendants' Brooklyn store, located at 84 18th Street, Brooklyn,

New York 11234; Defendants' Brooklyn store, located at 5701 Foster Avenue, Brooklyn, New York 11232; Defendants' Brooklyn store, located at 161 Morgan Avenue, Brooklyn, New York 11237; Defendants' Queens Plaza store, located at 1206 38th Avenue, Long Island City, New York 11101; and Defendants' Queens store, located at 101-03 Northern Boulevard, Corona, New York 10368.

266. Throughout Maurice Desrivieres's employment for Defendants, each workweek he was required to report to work at Big City's Bergen Street, Brooklyn location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

267. At all times hereinafter mentioned, Maurice Desrivieres was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

268. During most workweeks between October 2014 and September 2015, Maurice Desrivieres worked more than 55 hours per week for Defendants.

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

270. Maurice Desrivieres was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

271. Maurice Desrivieres was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Maurice Desrivieres for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

272. Due to the improper kick-backs Maurice Desrivieres was subjected to during his employment with Defendants, Defendants failed to compensate Maurice Desrivieres the applicable minimum wage for all the hours worked per week.

273. Defendants failed to furnish Maurice Desrivieres with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

274. Defendants failed to furnish Maurice Desrivieres with an annual wage notice in 2014, as was required by the NYLL.

275. Upon information and belief, Defendants did not keep accurate records of hours worked by Maurice Desrivieres.

Jay Gilbert

276. Jay Gilbert was employed by Defendants from in or about July 2010 through November 2015 as a delivery driver.

277. Jay Gilbert signed an operator agreement with Defendant KKLDS, Inc. upon being hired by Defendants.

278. Jay Gilbert was an employee of Defendants, working under their direct supervision.

279. Jay Gilbert reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455, and

Defendants' Queens Plaza store, located at 1306 38th Avenue, Long Island City, New York 11101.

280. Throughout Jay Gilbert's employment for Defendants, each workweek he was required to report to work at Big City's New Rochelle location from approximately 9:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 9:00 a.m. until approximately 5:00 p.m. every Saturday.

281. At all times hereinafter mentioned, Jay Gilbert was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

282. During most workweeks between July 2010 and November 2015, Jay Gilbert worked more than 40 hours per week for Defendants.

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

284. Jay Gilbert was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

285. Jay Gilbert was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Jay Gilbert for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

286. Due to the improper kick-backs Jay Gilbert was subjected to during his employment with Defendants, Defendants failed to compensate Jay Gilbert the applicable minimum wage for all the hours worked per week.

287. Defendants failed to furnish Jay Gilbert with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

288. Defendants failed to furnish Jay Gilbert with a wage notice from 2012 through 2014, as was required by the NYLL.

289. Upon information and belief, Defendants did not keep accurate records of hours worked by Jay Gilbert.

Roger Jones

290. Roger Jones was employed by Defendants from in or about September 2012 through November 2015 as a delivery driver.

291. Roger Jones signed an operator agreement with Defendant KKLDS, Inc. upon being hired by Defendants.

292. Roger Jones was an employee of Defendants, working under their direct supervision.

293. Roger Jones reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455, and Defendants' Queens Plaza store, located at 1306 38th Avenue, Long Island City, New York 11101.

294. Throughout Roger Jones's employment for Defendants, each workweek he was required to report to work at Big City's New Rochelle location from approximately 8:00 a.m.

until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

295. At all times hereinafter mentioned, Roger Jones was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

296. During most workweeks between September 2012 and November 2015, Roger Jones worked more than 58 hours per week for Defendants.

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

298. Roger Jones was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

299. Roger Jones was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Roger Jones for travel expenses related to his employment for Defendants such as gasoline for deliveries.

300. Due to the improper kick-backs Roger Jones was subjected to during his employment with Defendants, Defendants failed to compensate Roger Jones the applicable minimum wage for all the hours worked per week.

301. Defendants failed to furnish Roger Jones with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid.

302. Defendants failed to furnish Roger Jones with a wage notice from 2012 to 2014, as was required by the NYLL.

303. Upon information and belief, Defendants did not keep accurate records of hours worked by Roger Jones.

Rousso Mede

304. Rousso Mede was employed by Defendants from in or about January 2006 through November 2015 as a delivery driver.

305. Rousso Mede signed an operator agreement with Defendant KKLDS, Inc. upon being hired by Defendants.

306. Rousso Mede was an employee of Defendants, working under their direct supervision.

307. Rousso Mede reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; and Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455.

308. Throughout Rousso Mede's employment for Defendants, each workweek he was required to report to work at Big City's New Rochelle location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

309. At all times hereinafter mentioned, Rousso Mede was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

310. During most workweeks between January 2006 and November 2015, Rousso Mede worked more than 58 hours per week for Defendants.

311. From January 2006 and November 2015, Defendants failed to compensate Rousso Mede for all of the time worked in excess of 40 hours per week at a rate of at least 1 and ½ times his regular hourly rate.

312. From January 2006 and November 2015, Rousso Mede was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

313. From January 2006 and November 2015, Rousso Mede was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Roger Jones for travel expenses related to his employment for Defendants such as gasoline for deliveries.

314. From January 2006 and November 2015, due to the improper kick-backs Rousso Mede was subjected to during his employment with Defendants, Defendants failed to compensate Rousso Mede the applicable minimum wage for all the hours worked per week.

315. From January 2006 and November 2015, Defendants failed to furnish Rousso Mede with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

316. Defendants failed to furnish Rousso Mede with a wage notice from 2012 to 2014, as was required by the NYLL.

317. Upon information and belief, Defendants did not keep accurate records of hours worked by Rousso Mede.

Jose Peralta

318. Jose Peralta was employed by Defendants from in or about August 2013 until in or about August 2015 as a delivery driver.

319. Jose Peralta signed an operator agreement with Defendant Big City Yonkers, Inc. upon being hired by Defendants.

320. Jose Peralta was an employee of Defendants, working under their direct supervision.

321. Jose Peralta reported to various Big City locations for Defendants, including but not limited to: Defendants' Yonkers store, located at 44 Runyon Ave, Yonkers, New York 10710; Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; and Defendants' New Jersey store, located at 300 East Elizabeth Avenue, Linden, New Jersey, 07036.

322. Throughout Jose Peralta's employment for Defendants, each workweek he was required to report to work at Big City's Yonkers location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

323. At all times hereinafter mentioned, Jose Peralta was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

324. During most workweeks between August 2013 and August 2015, Jose Peralta worked more than 55 hours per week for Defendants.

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

326. Jose Peralta was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

327. Jose Peralta was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Plaintiff for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

328. Due to the improper kick-backs Jose Peralta was subjected to during his employment with Defendants, Defendants failed to compensate Plaintiff the applicable minimum wage for all the hours worked per week.

329. Defendants failed to furnish Jose Peralta with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

330. Defendants failed to furnish Jose Peralta with a wage notice in 2013 and 2014 as was required by the NYLL.

331. Upon information and belief, Defendants did not keep accurate records of hours worked by Jose Peralta.

Nieve Quezada

332. Nieve Quezada was employed by Defendants from in or about August 2013 through August 2015 as a delivery driver.

333. Nieve Quezada signed an operator agreement with Defendant Big City Yonkers,

Inc. upon being hired by Defendants.

334. Nieve Quezada was an employee of Defendants, working under their direct supervision.

335. Nieve Quezada reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455; and Defendants' New Jersey store, located at 300 East Elizabeth Avenue, Linden, New Jersey 07036.

336. Throughout Nieve Quezada's employment for Defendants, each workweek he was required to report to work at Big City's Yonkers location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

337. At all times hereinafter mentioned, Nieve Quezada was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

338. During most workweeks between August 2013 and August 2015, Nieve Quezada worked more than 55 hours per week for Defendants.

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

340. Nieve Quezada was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

341. Nieve Quezada was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Nieve Quezada for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

342. Due to the improper kick-backs Nieve Quezada was subjected to during his employment with Defendants, Defendants failed to compensate Nieve Quezada the applicable minimum wage for all the hours worked per week.

343. Defendants failed to furnish Nieve Quezada with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

344. Defendants failed to furnish Nieve Quezada with an annual wage notice in 2013 and 2014 as was required by the NYLL.

345. Upon information and belief, Defendants did not keep accurate records of hours worked by Nieve Quezada.

Maximino Rosa

346. Maximino Rosa was employed by Defendants from in or about June 2014 through August 2014 as a delivery driver.

347. Maximino Rosa signed an operator agreement with Defendant Big City Yonkers, Inc. upon being hired by Defendants.

348. Maximino Rosa was an employee of Defendants, working under their direct supervision.

349. Maximino Rosa reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455; and Defendants' New Jersey store, located at 300 East Elizabeth Avenue, Linden, New Jersey 07036.

350. Throughout Maximino Rosa's employment for Defendants, each workweek he was required to report to work at Big City's Yonkers location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

351. At all times hereinafter mentioned, Maximino Rosa was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

352. During most workweeks between June 2014 and August 2014, Maximino Rosa worked more than 58 hours per week for Defendants.

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

354. Maximino Rosa was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

355. Maximino Rosa was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Maximino Rosa for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

356. Due to the improper kick-backs Maximino Rosa was subjected to during his employment with Defendants, Defendants failed to compensate Maximino Rosa the applicable minimum wage for all the hours worked per week.

357. Defendants failed to furnish Maximino Rosa with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid for each workweek.

358. Defendants failed to furnish Maximino Rosa with an annual wage notice in 2014 as was required by the NYLL.

359. Upon information and belief, Defendants did not keep accurate records of hours worked by Maximino Rosa.

Tyrell Stewart

360. Tyrell Stewart was employed by Defendants from in or about June 2005 through November 2013 as a delivery driver.

361. Tyrell Stewart was an employee of Defendants, working under their direct supervision.

362. Tyrell Stewart reported to various Big City locations for Defendants, including but not limited to: Defendants' New Rochelle store, located at 11 Cliff Street, New Rochelle, New York 10801; Defendants' Yonkers store, located at 44 Runyon Avenue, Yonkers, New York 10710; Defendants' Inwood store, located at 1301 Inwood Avenue, Bronx, New York 10452; Defendants' Concord store, located at 745 East 145th Street, Bronx, New York 10455;

Defendants' Queens Plaza store, located at 1306 38th Avenue, Long Island City, New York 11101; and Defendants' Corona store, located at 101-03 Northern Boulevard, Corona, New York 10368.

363. Throughout Tyrell Stewart's employment for Defendants, each workweek he was required to report to work at Big City's New Rochelle location from approximately 8:00 a.m. until approximately 6:00 p.m. every Monday through Friday, and from approximately 8:00 a.m. until approximately 5:00 p.m. every Saturday.

364. At all times hereinafter mentioned, Tyrell Stewart was required to be paid overtime pay at the statutory rate of 1 and ½ his regular rate of pay after he worked 40 hours in a workweek for Defendants.

365. During most workweeks between June 2005 and November 2013, Tyrell Stewart worked more than 58 hours per week for Defendants.

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

367. Tyrell Stewart was required by Defendants to use his own vehicle for deliveries and pay for all travel expenses that were necessary in order for him to complete his duties for Defendants such as expenses related to the maintenance of his vehicle and gasoline.

368. Tyrell Stewart was subjected to improper kick-backs by Defendants as a result of Defendants' failure to reimburse Tyrell Stewart for travel expenses related to his employment for Defendants such as gasoline and violations related to Defendants' E-ZPass.

369. Due to the improper kick-backs Tyrell Stewart was subjected to during his employment with Defendants, Defendants failed to compensate Tyrell Stewart the applicable minimum wage for all the hours worked per week.

370. Defendants failed to furnish Tyrell Stewart with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances and deductions taken, and net wages paid each workweek.

371. Defendants failed to furnish Tyrell Stewart with a wage notice in 2012 and 2013, as was required by the NYLL.

372. Upon information and belief, Defendants did not keep accurate records of hours worked by Tyrell Stewart.

FIRST CAUSE OF ACTION
FLSA – Overtime Wages
(Brought on behalf of FLSA Class Representative, Plaintiffs and the FLSA Collective)

373. The FLSA Class Representative and Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

374. The FLSA Class Representative, Plaintiffs, and members of the FLSA Collective are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

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

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

377. Defendants failed to make a good faith effort to comply with the FLSA with respect to their compensation to Plaintiffs and the FLSA Collective.

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

379. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and 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.

380. Defendants were or should have been aware that the FLSA required it to pay their delivery drivers premium overtime pay for all hours worked in excess of 40 per week.

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

SECOND CAUSE OF ACTION
NYLL – Unpaid Overtime
(Brought on behalf of the New York Class Representative, Plaintiffs, and the members of the New York Class)

382. The New York Class Representative and Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

383. At all times relevant, Plaintiffs and the New York Class were employees and Defendants were their employer within the meaning of the NYLL.

384. Plaintiffs and the New York Class are covered by the NYLL.

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

386. Defendants failed to pay 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.

387. Defendants failed to pay Plaintiffs and members of New York Class overtime at a wage rate of one and one-half times their regular rate of pay.

388. Defendants have a policy and practice of refusing to pay overtime compensation for all hours worked to Plaintiffs and the New York Class.

389. Defendants' failure to pay overtime compensation to Plaintiffs and the New York Class was willful and intentional.

390. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid overtime compensation, reasonable attorneys' fees and costs of the action, as provided for by NYLL Article 6 § 198, and pre-judgment and post-judgment interest.

391. Plaintiffs do not seek liquidated damages under the NYLL on behalf of the New York Class.

THIRD CAUSE OF ACTION
FLSA - Failure to Pay Minimum Wage
(Brought on behalf of the FLSA Class Representative, Plaintiffs, and the FLSA Collective)

392. The FLSA Class Representative, on behalf of himself, Plaintiffs, and the FLSA Collective, realleges and incorporates by reference all allegations in all preceding paragraphs.

393. At all relevant times, Plaintiffs were Defendants' employees within the meaning of 29 U.S.C. § 203(e)(1).

394. At all relevant times, Defendants were Plaintiffs' employer within the meaning of 29 U.S.C. § 203(d).

395. At all relevant times, Plaintiffs and Defendants were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. § 206(a).

396. At all relevant times, the applicable federal minimum wage is codified by 29 U.S.C. § 206(a)(1).

397. Defendants violated Plaintiffs' rights to receive their wages free and clear of all "kick-backs," as codified by 29 C.F.R. § 531.35, as a result of Defendants requiring Plaintiffs and members of the FLSA Collective to pay for expenses required for the performance of their work for Defendants.

398. Defendants willfully failed to pay Plaintiffs the minimum wages for all hours worked, in violation of FLSA, 29 U.S.C. § 206(a).

399. Defendants required Plaintiffs and members of the FLSA Collective to pay for all tools required for the completion of their duties for Defendants, including, but not limited to: maintenance of vehicle; gasoline; and violations related to Defendants' E-ZPass.

400. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid minimum wage, together with interest and liquidated damages, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
NYLL - Failure to Pay Minimum Wage
(Brought on behalf of the New York Class Representative, Plaintiffs, and the members of the New York Class)

401. The New York Class Representative and Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

402. At all times relevant to this action, the state minimum wage was $7.25 per hour

on and after July 24, 2009; $8.00 per hour on or after December 31, 2013; and $8.75 per hour on and after December 31, 2014, as codified by NYLL § 652(1); 12 N.Y.C.R.R. § 142-2.1.

403. Defendants willfully violated Plaintiffs and the New York Class' rights by failing to pay Plaintiffs and the New York Class the minimum wage for all hours of work performed each week, in violation of N.Y. Lab. Law § 650 *et seq.*

404. Defendants violated Plaintiffs and the New York Class' rights to receive their wages free and clear of all "kick-backs," as codified by N.Y. Lab. Law § 198–b, as a result of Defendants requiring Plaintiffs and members of the New York Class to pay for expenses required for the performance of their work for Defendants.

405. Plaintiffs and the New York Class were required by Defendants to use their own vehicles for deliveries and pay for all expenses related to their vehicle including maintenance, gasoline, and violations related to Defendants' E-ZPass.

406. Due to Defendants' NYLL violations, Plaintiffs and the New York Class are entitled to recover from Defendants their unpaid regular wages, reasonable attorneys' fees, and costs of this action pursuant to NYLL § 663(1).

407. Plaintiffs do not seek liquidated damages under the NYLL on behalf of the New York Class.

FIFTH CAUSE OF ACTION
NYLL – Unlawful Wage Deduction
(Brought on behalf of Plaintiffs and the members of the New York Class)

408. The New York Class Representative and Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

409. Defendants knowingly, willfully, and intentionally violated NYLL Article 6, § 193 when Defendants deducted money from Plaintiffs and members of the New York Class' earned wages.

410. Due to Defendants' violations of the NYLL, Plaintiffs and members of the New York Class are entitled to recover from defendants their full wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

411. Plaintiffs do not seek liquidated damages under the NYLL on behalf of the New York Class.

SIXTH CAUSE OF ACTION
NYLL – Notice and Record-Keeping Requirement Violation
(Brought on behalf of the New York Class Representative, Plaintiffs, and members of the New York Class)

412. The New York Class Representative and Plaintiffs reallege and incorporate by reference herein all allegations in all preceding paragraphs.

413. Defendants failed to supply Plaintiffs 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.

414. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage notice at the time of hiring from April 9, 2011 through February 26, 2015, Plaintiffs and members of the New York Class are each entitled to

damages of $50 per work week, or a total of $2,500 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

415. Due to Defendants' violations of N.Y. Lab. Law § 195, for each day that Defendants failed to provide a proper wage notice at the time of hiring from February 26, 2015 through the present, Plaintiffs and members of the New York Class are entitled to damages of $50 per work day, or a total of $5,000 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

416. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage statement from April 9, 2011 through February 26, 2015, Plaintiffs and members of the New York Class are each entitled to damages of $100 per work week, or a total of $2,500 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

417. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage statement from February 26, 2015 through the present, Plaintiffs and members of the New York Class are each entitled to damages of $250 per work day, or a total of $5,000 per class member, as provided for by N.Y. Lab. Law § 198, reasonable attorneys' fees, costs, and injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek for the following relief:

A. That, at the earliest possible time, the FLSA Class Representative be allowed to give notice to the FLSA Collective, 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, been employed by Defendants as

delivery drivers, 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, minimum wages, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Certification of this case as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules, or in the alternative, liquidated damages in an equal amount of all unpaid overtime pay and minimum wages to each individually named Plaintiff pursuant to the NYLL and the supporting New York State Department of Labor regulations;

D. Designation of Plaintiff Frank Robinson as the Class Representative, and counsel of record as Class Counsel;

E. Unpaid overtime pay and minimum wages permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;

F. Statutory damages, as provided for by N.Y. Lab. Law §§ 193 and 198, for Defendants' violations of the notice and recordkeeping requirements pursuant to N.Y. Lab. Law § 195;

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 their unlawful practices;

I. Attorneys' fees and costs of the action;

J. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;

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

L. Reasonable incentive awards for Plaintiffs to compensate them for the time they spent attempting to recover wages for the Class and for the risks they took in doing so; and

M. Such other relief as this Court shall deem just and proper.

Dated: Melville, New York
August 29, 2016

Respectfully submitted,

By: *___/s/ Troy L. Kessler___*
Troy L. Kessler

SHULMAN KESSLER LLP
Troy L. Kessler
Garrett Kaske
534 Broadhollow Road, Suite 275
Melville, New York 11747
Telephone: (631) 499-9100

THE LAW OFFICES OF ANTHONY A. CAPETOLA
Anthony A. Capetola
Two Hillside Avenue, Building C
Williston Park, New York 11596
Telephone: (516) 746-2300

Attorneys for Plaintiffs and the Putative FLSA Collective and New York Class