

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALBA AGUILAR, LUIS E. CASTRO ALZATE, and	:
CARMEN RODRIGUEZ, on behalf of themselves,	:
and all others similarly situated,	:
	: Case No.:
Plaintiffs,	:
	: <u>COMPLAINT</u>
- against -	:
	:
OWL’S NEST, INC., and	:
ROBERT MERCER, an individual,	:
	:
Defendants.	:
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Plaintiffs Alba Aguilar, Luis Alzate, and Carmen Rodriguez, on behalf of themselves, and on behalf of all others similarly situated, by and through their attorneys Shulman Kessler LLLP and Make The Road New York, allege as follows:

INTRODUCTION

1. This lawsuit seeks to recover overtime compensation for Plaintiffs and their similarly situated co-workers who have worked as domestic workers for Owl’s Nest, Inc. (“Owl’s Nest”) and Robert Mercer (“Mercer”).

2. Mercer is a hedge fund manager and co-CEO of Renaissance Technologies.

3. Mercer has been named as one of the top earning hedge fund managers by Forbes.

4. Owl’s Nest was formed exclusively for the purpose of employing domestic workers in the Mercer household.

5. Plaintiffs were domestic workers employed by Owl’s Nest and Mercer, who worked directly for Mercer and his immediate family at all times at 149 Harbor Road, Head of Harbor New York 11790.

6. Plaintiffs bring this action seeking monetary damages and affirmative relief based upon defendants’ violation of the Fair Labor Standards Act of 1938 (hereinafter referred to as

“FLSA”), as amended, 29 U.S.C. § 201, *et seq.*, the New York Labor Law (hereinafter referred to as “NYLL” or “N.Y. Lab. Law”) and other appropriate rules, regulations, statutes and ordinances.

STATEMENT PURSUANT TO LOCAL RULE 9

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

JURISDICTION & VENUE

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

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

10. Defendants employed Plaintiffs in the State of New York, within the Eastern District of New York, and specifically at 149 Harbor Road, Head of Harbor, New York 11790.

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

THE PARTIES

12. Plaintiff Alba Aguilar is a resident of the County of Queens, State of New York.

13. At all times relevant to the Complaint, Plaintiff Alba Aguilar was a “domestic service employee” within the meaning of 29 U.S.C. § 203(e) and NYLL § 2(16).

14. Plaintiff Luis E. Castro Alzate is a resident of the County of Suffolk, State of New York.

15. At all times relevant to the Complaint, Plaintiff Luis E. Castro Alzate was a “domestic service employee” within the meaning of 29 U.S.C. § 213(a)(15) and N.Y. Lab. Law § 2(16).

16. Plaintiff Carmen Rodriguez is a resident of the County of Queens, State of New York.

17. At all times relevant to the Complaint, Plaintiff Carmen Rodriguez was a “domestic service employee” within the meaning of 29 U.S.C. § 213(a)(15) and N.Y. Lab. Law § 2(16).

18. Plaintiff Alba Aguilar was employed by the Defendants from in or about February 2012 until in or about January 2013.

19. During the course of her employment with Defendants, Plaintiff Alba Aguilar was a domestic worker.

20. Plaintiff Luis E. Castro Alzate was employed by the Defendants from in or about November 2007 until in or about December 2012.

21. During the course of his employment with the Defendants, Plaintiff Luis E. Castro Alzate was a domestic worker.

22. Plaintiff Carmen Rodriguez was employed by the Defendants from in or about June 2011 until in or about December 2012.

23. During the course of his employment with the Defendants, Plaintiff Carmen Rodriguez was a domestic worker.

24. Upon information and belief, Defendant Owl’s Nest was and still is a domestic corporation organized and existing pursuant to the laws of the State of New York.

25. Upon information and belief, Defendant Owl's Nest's principal place of business was and still is at 149 Harbor Road, Head of Harbor, New York 11790.

26. Upon information and belief, and at all times hereinafter mentioned, Defendant Owl's Nest was and still is engaged in the domestic services business.

27. At all times hereinafter mentioned, Defendant Owl's Nest was and still is an "employer" within the meaning of 29 U.S.C. § 203(d) and N.Y. Lab. Law § 190(3).

28. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer owns and/or operates Defendant Owl's Nest.

29. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer is the Chairman of Defendant Owl's Nest.

30. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer is a shareholder of Defendant Owl's Nest.

31. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer is a corporate officer of Defendant Owl's Nest.

32. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer is the Chief Executive Officer of Defendant Owl's Nest.

33. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer is an agent of Defendant Owl's Nest.

34. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer has the authority to make personnel decisions for Defendant Owl's Nest.

35. Upon information and belief, and at all times hereinafter mentioned Defendant Mercer has the authority to make payroll decisions for Defendant Owl's Nest.

36. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer supervised employees of Defendant Owl's Nest.

37. Defendant Mercer has the power to make binding decisions for Defendant Owl's Nest.

38. Upon information and belief, and at all times hereinafter mentioned, Defendant Mercer has the authority to hire and fire employees for Defendant Owl's Nest.

39. At all times hereinafter mentioned, Defendant Mercer was and still is an "employer" within the meaning of 29 U.S.C. § 203(d) and N.Y. Lab. Law § 190(3).

FACTS

40. Plaintiff Alba Aguilar was an employee of Defendants, working under their direct supervision.

41. At all times hereinafter mentioned, Plaintiff Alba Aguilar was required to be paid overtime pay at the statutory rate of 1 and 1/2 times, her regular rate of pay after she had worked 40 hours in a work week.

42. Plaintiff Alba Aguilar worked more than 50 hours in most workweeks in which she was employed by Defendants.

43. Defendants failed to compensate the Plaintiff Alba Aguilar for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times her regular hourly rate, throughout the entire term of her employment with Defendants.

44. Plaintiff Luis E. Castro Alzate was an employee of Defendants, working under their direct supervision.

45. At all times hereinafter mentioned, Plaintiff Luis E. Castro Alzate was required to be paid overtime pay at the statutory rate of 1 and 1/2 times his regular rate of pay after he had

worked 40 hours in a workweek.

46. Plaintiff Luis E. Castro Alzate worked more than 65 hours in most workweeks in which he was employed by Defendants.

47. Defendants failed to compensate the Plaintiff Luis E. Castro Alzate for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times his regular hourly rate, throughout the entire term of his employment with Defendants.

48. Plaintiff Carmen Rodriguez was an employee of Defendants, working under their direct supervision.

49. At all times hereinafter mentioned, Plaintiff Carmen Rodriguez was required to be paid overtime pay at the statutory rate of 1 and 1/2 times, her regular rate of pay after she had worked 40 hours in a workweek.

50. Plaintiff Carmen Rodriguez worked more than 50 hours in most workweeks in which she was employed by Defendants.

51. Defendants failed to compensate Plaintiff Carmen Rodriguez for time worked in excess of 40 hours per week at a rate of at least 1 and 1/2 times her regular hourly rate, throughout the entire term of her employment with Defendants.

52. At the time of their employment, Plaintiffs were promised semiannual bonuses, as part of their salary.

53. Plaintiffs' semiannual bonuses were nondiscretionary and based on Plaintiffs continued employment with Defendants.

54. Plaintiffs earned said semiannual bonuses.

55. Defendants deducted money from Plaintiffs' semiannual bonuses.

56. After said semiannual bonuses were earned, Defendants deducted money from Plaintiffs' semiannual bonuses as a form of punishment or "demerits" related to Plaintiffs' alleged poor work performance.

57. Demerits initially began at \$10 and during the course of Plaintiffs' employment, rose to \$20 per demerit.

58. Plaintiffs received demerits throughout the work year for alleged poor work performance, including but not limited to the following: failing to replace shampoos and other toiletries if there was an amount of less than one-third of a bottle remaining; failing to properly close doors; failing to leave extra towels in the bathroom; failing to change the razor blades in the shaver; failing to level pictures; leaving cleaning items out; leaving items in the refrigerator; and improperly counting beverages.

59. Plaintiffs did not consent to the deductions from their bonuses.

60. Plaintiffs did not authorize the deductions from their bonuses.

COLLECTIVE ACTION CLAIMS

61. Upon information and belief, there are approximately more than 10 current and former employees that are similarly situated to Plaintiffs who have been denied overtime compensation. Plaintiffs represent other domestic workers and are acting on behalf of Defendants' current and former employees' interests as well as their own interests in bringing this action.

62. Plaintiffs Alba Aguilar, Luis E. Castro Alzate, and Carmen Rodriguez seek to proceed as a collective action with regard to the First Cause of Action, pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the following class of persons:

All persons who are currently, or have been employed by the Defendants, at any time during the 3 years prior to the filing of their respective consent forms, who were domestic workers.

63. Former and current employees similarly situated to Plaintiffs Alba Aguilar, Luis E. Castro Alzate, and Carmen Rodriguez are readily identifiable and locatable through use of the Defendants' records. These similarly situated employees should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, persons similarly situated to Plaintiffs Alba Aguilar, Luis E. Castro Alzate, and Carmen Rodriguez 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.

**AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS ALBA AGUILAR,
LUIS E. CASTRO ALZATE, AND CARMEN RODRIGUEZ,
AND THE PUTATIVE FLSA COLLECTIVE ACTION
FOR FAILURE TO PAY OVERTIME
A FLSA VIOLATION**

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

65. Defendants employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least 1 and 1/2 times the regular hourly rate, in violation of the requirements of 29 U.S.C. § 207(a)(1).

66. The complete records concerning the number of hours worked by Plaintiffs as well as the compensation Plaintiffs received in workweeks in which excess hours were worked are in the exclusive possession and control of Defendants and as such, Plaintiffs are unable to

state at this time the exact amount due and owing to them.

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

68. Defendants have failed to make a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and other similarly situated individuals.

69. Because Defendants’ violations of the FLSA have been willful, a 3 year statute of limitations applies, pursuant to 29 U.S.C. § 255.

70. 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 and liquidated damages, in an amount to be determined at trial.

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

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

72. Defendants employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs for the time worked in excess of 40 hours per week, at a rate of at least 1 and 1/2 times the regular hourly rate, in violation of the requirements of the NYLL.

73. The complete records concerning the number of hours worked by Plaintiffs as well as the compensation Plaintiffs received in workweeks in which excess hours were worked are in the exclusive possession and control of Defendants, and as such, Plaintiffs are unable to

state at this time the exact amount due and owing to them.

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

75. By the course of conduct set forth above, Defendants have violated N.Y. Lab. Law § 170; 12 N.Y.C.R.R. § 142-2.2.

76. Defendants had a policy and practice of refusing to pay overtime compensation to the Plaintiffs.

77. Defendants' failure to pay overtime compensation to Plaintiffs was willful within the meaning of N.Y. Lab. Law § 663.

78. 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 and such other legal and equitable relief due to Defendants' unlawful and willful conduct, as the Court deems just and proper.

79. Plaintiffs seek recovery of liquidated damages, attorneys' fees, and costs as provided by the NYLL.

AS FOR THE THIRD CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS
FOR UNLAWFUL WAGE DEDUCTIONS
A NYLL VIOLATION

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

81. Defendants knowingly, willfully, and intentionally violated N.Y. Lab. Law § 193 when Defendants made deductions from Plaintiffs' wages by taking deductions from Plaintiffs' earned bonuses.

82. Said deductions were not authorized by Plaintiffs.

83. Said deductions were without the consent of Plaintiffs.

84. Due to Defendants' violations of the NYLL, Plaintiffs are entitled to recover from Defendants their full wages, reasonable attorneys' fees, costs, liquidated damages, and pre-judgment and post-judgment interest.

AS FOR THE FOURTH CAUSE OF ACTION ON
BEHALF OF PLAINTIFFS
FOR VIOLATION OF NOTICE AND RECORD-KEEPING REQUIREMENTS
A NYLL VIOLATION

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

86. Defendants failed to supply Plaintiffs with a notice as required by NYLL, Article 6, § 195, in English or in the language identified by Plaintiffs as their primary language, containing Plaintiffs' rate of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with N.Y. Lab. Law § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

87. Defendants failed to supply Plaintiffs 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.

88. Due to Defendants' violations of the N.Y. Lab. Law § 195, each Plaintiff is entitled to damages of fifty dollars for each workweek that Defendants failed to provide Plaintiffs with a wage notice, or a total of twenty-five hundred dollars, and damages of one hundred dollars for each workweek that Defendants failed to provide Plaintiffs with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198, reasonable attorney's fees, costs and injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Alba Aguilar, Luis E. Castro Alzate, and Carmen Rodriguez, on behalf of themselves and the putative FLSA Collective Class, pray for the following relief on the first cause of action:

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

WHEREFORE, Plaintiffs pray for the following relief, on the second cause of action:

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

WHEREFORE, Plaintiffs pray for the following relief, on the third cause of action:

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

WHEREFORE, Plaintiffs demand the following relief on the third cause of action:

- a. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;
- b. Compensatory damages to Plaintiffs amount to be determined at trial;
- c. Liquidated damages at the applicable rate;
- d. All costs and attorneys' fees incurred prosecuting these claims; and
- e. For such further relief as the Court deems just and equitable.

WHEREFORE, Plaintiffs pray for the following relief, on the fourth cause of action:

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

- b. Damages of one hundred dollars to Plaintiffs for each workweek that Defendants failed to provide Plaintiffs with accurate wage statements, or a total of twenty-five hundred dollars, as provided for by N.Y. Lab. Law § 198;
- c. All costs and attorneys' fees incurred prosecuting those claims;
- d. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;
- e. An injunction requiring Defendants to cease the unlawful activity described herein pursuant to N.Y. Lab. Law § 190 *et seq.*; and
- f. For such further relief as the Court deems just and equitable.

Dated: Melville, New York
July 9, 2013

Yours, etc.,

SHULMAN KESSLER LLP

By: /s/ Troy L. Kessler

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