

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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|---|-------------------------|
| ----- X                                       |                         |
| HECTOR RIVERA and MARCO RIVERA, on behalf of  | :                       |
| themselves and all others similarly situated, | : Case No. 18 Civ. 4084 |
|   | :                       |
| Plaintiffs,                                   | : COLLECTIVE ACTION     |
| - against -                                   | : COMPLAINT             |
|   | :                       |
| TITAN FIRE SPRINKLERS INC. d/b/a TITAN FIRE   | :                       |
| SPRINKLERS, TITAN FIRE PROTECTION, INC., and  | :                       |
| STEPHEN RACCOMANDATO, an individual,          | :                       |
|   | :                       |
| Defendants.                                   | :                       |
| ----- X                                       |                         |

Plaintiffs Hector Rivera and Marco Rivera, on behalf of themselves and all others similarly situated, through their attorneys Shulman Kessler LLP, complaining of Defendants Titan Fire Sprinklers Inc. d/b/a Titan Fire Sprinklers and Titan Fire Protection, Inc., (“Titan”) and Stephen Raccomandato (collectively with Titan, “Defendants”), allege as follows:

**INTRODUCTION**

1. This is a collective action brought on behalf of current and former employees of Defendants.

2. Plaintiffs and other similarly situated laborers regularly worked over 40 hours a week for Defendants. Defendants, however, failed to pay them time and one-half their regular rate for all hours worked because Defendants either (1) only paid their employees at their regular, non-prevailing wage rate or (2) did not pay their employees for all of the hours they worked. This practice of refusing to pay employees at the proper overtime wage rate Defendants violated the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, *et seq.*, the New York Labor Law (“NYLL” or “N.Y. Lab. Law”), and other appropriate rules, regulations, statutes, and ordinances.

3. Defendants failure to pay Plaintiffs for all hours worked also violated the NYLL, in that Defendants failed to timely pay them for their non-overtime hours.

4. Defendants also forced Plaintiffs to pay for their own tools, thereby placing the cost of doing business on their employees in violation of the NYLL and 12 N.Y.C.R.R. § 195-4.5.

5. Lastly, Defendants failed to provide Plaintiffs with accurate wage statements as required by the NYLL, including by failing to list Plaintiffs' rate of pay.

6. As a result, Plaintiffs bring this action seeking back pay, liquidated damages, interest, attorneys' fees, and costs, and authorization to notice all similarly situated employees of this action and provide them the opportunity to join.

#### **JURISDICTION & VENUE**

7. 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.

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

9. Defendants are authorized to do business in New York State and do business in Nassau and Suffolk Counties.

10. Titan's principal place of business is located in Suffolk County.

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

**THE PARTIES**

***Plaintiff Hector Rivera***

12. Plaintiff Hector Rivera is an individual who resides in Medford, New York.

13. At all times relevant to the Complaint, Hector Rivera 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), 651(5).

14. At all times relevant, Hector Rivera was employed by Defendants as a laborer performing the work of a steamfitter, carpenter, and general laborer.

***Plaintiff Marco Rivera***

15. Plaintiff Marco Rivera is an individual who resides in Franklin Square, New York.

16. At all times relevant to the Complaint, Marco Rivera 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), 651(5).

17. At all times relevant, Marco Rivera was employed by Defendants as a laborer performing the work of a steamfitter, carpenter, and general laborer.

***Defendant Titan Fire Sprinklers Inc.***

18. Upon information and belief, Titan was and still is a domestic corporation, authorized to do business pursuant to the laws of the State of New York.

19. Upon information and belief, Titan does business as Titan Fire Sprinklers and Titan Fire Protection, Inc.

20. Upon information and belief, Titan’s principal place of business is located at 380 Neptune Avenue, West Babylon, NY 11704.

21. Titan lists its Principal Executive Office as 380 Neptune Avenue, West Babylon, NY 11704 with the New York State Department of State, Division of Corporations.

22. Upon information and belief, Titan is in the fire protection business.

23. At all times relevant, Titan 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), 651(6).

24. At all times relevant, the activities of Titan constituted an “enterprise” within the meaning of Section 3(r) & (s) of the FLSA, 29 U.S.C. § 203(r) & (s).

25. Upon information and belief, Titan maintains control, oversight, and direction over its operations and employment practices.

26. At all times relevant, Titan employed employees, including Plaintiffs, 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).

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

***Defendant Stephen Raccomandato***

28. Upon information and belief, Raccomandato owns and/or operates Titan.

29. Upon information and belief, Raccomandato is the President of Titan.

30. Raccomandato holds himself out as the President of Titan. For example, Raccomandato is listed on Titan’s website as the President of Titan Fire Protection Inc.<sup>1</sup> and

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<sup>1</sup> About Us, Titan Fire Protection Inc., <http://www.titanfpi.com/index-1.html> (last visited June 27, 2018).

Titan advertised in the Suffolk County Democrats Spring 2016 dinner journal, listing Raccomandato as the President.<sup>2</sup>

31. Upon information and belief, Raccomandato is the Vice-President of Titan.
32. Upon information and belief, Raccomandato is a shareholder of Titan.
33. Upon information and belief, Raccomandato is a corporate officer of Titan.
34. Upon information and belief, Raccomandato is the Chief Executive Officer of Titan.
35. Raccomandato holds himself out as the Chief Executive Officer of Titan, including with the New York State Department of State, Division of Corporations.
36. Upon information and belief, Raccomandato is an agent of Titan.
37. Upon information and belief, Raccomandato has authority over personnel decisions for Titan.
38. Upon information and belief, Raccomandato has authority over payroll decisions for Titan.
39. Upon information and belief, Raccomandato has the authority to alter the terms and conditions of Titan's employees' employment.
40. For example, Titan has issued its employees letters and memo Raccomandato, as Titan's President, notifying them of the following:
  - a. Titan's yearly holidays and closures;
  - b. That service employees are considered "on call 24hrs a day during company closures;"
  - c. Changes to Titan's vacation-time policies and sick-leave procedures;

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<sup>2</sup> See p. 130 [http://suffolkcountydems.com/sites/default/files/scdc\\_spring\\_journal\\_2016.pdf](http://suffolkcountydems.com/sites/default/files/scdc_spring_journal_2016.pdf) (last visited June 27, 2018).

- d. That all employees working at the St. Catherine's jobsite had to have a current flu shot; and
- e. A list is of personal tools, such as channel locks, tape measure, key hold saw, Allen keys, hard hat, boots, and a rat tail file.

41. Upon information and belief, Raccomandato supervises employees of the Titan.

42. Upon information and belief, Raccomandato has the authority to hire and fire employees for Titan.

43. Upon information and belief, Raccomandato has the power to make binding decisions for Titan.

44. Upon information and belief, Raccomandato has the power to transfer the assets or liabilities of Titan.

45. Upon information and belief, Raccomandato has the power to declare bankruptcy on behalf of Titan.

46. Upon information and belief, Raccomandato has the power to enter into contracts on behalf of Titan.

47. Upon information and belief, Raccomandato signed checks and authorized payments made on Titan's behalf.

48. For example, Marco Rivera, in 2016, was paid by company check signed by Raccomandato.

49. Upon information and belief, Raccomandato directed the work of Titan's employees, including Plaintiffs' manager Jason Keller.

50. At all relevant times, Raccomandato 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), 651(6).

***Defendants***

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

52. At all times relevant, Defendants individually and collectively were and still are “employers” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d), and N.Y. Lab. Law §§ 190(3), 651(6).

53. At all times relevant, 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).

54. Defendants collective 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**

55. Plaintiff brings the First Cause of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who work or have worked for Defendants within the last three years and who elect to opt-in to this action.

56. Upon information and belief, there are approximately more than 15 current and former employees that are similarly situated to Plaintiff who were denied overtime compensation at the proper rate.

57. Plaintiffs represents other employees and are acting on behalf of Defendants’ current and former employees’ interests as well as their own interests in bringing this action.

58. Defendants unlawfully required Plaintiffs and all similarly situated individuals to work in excess of 40 hours per week without paying them overtime compensation at a rate of at least one and one-half times their regular hourly rate.

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

All manual laborers who worked over 40 hours in a workweek while employed by Defendants at any time within the three years prior to the filing of their respective consent forms (the “FLSA Collective”).

60. Defendants were aware or should have been aware that the law required them to pay non-exempt employees, including Plaintiffs and the FLSA Collective, an overtime premium of one and one times their regular rate of pay for all work-hours Defendants suffered or permitted them to work in excess of 40 per workweek. Upon information and belief, Defendants applied the same unlawful policies and practices to their roofing technicians throughout the State of New York.

61. The FLSA Collective is readily identifiable and locatable through the use of 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.

**FACTUAL COLLECTIVE ACTION ALLEGATIONS**

62. Plaintiffs and the members of the FLSA Collective (“Class Members”) are victims of Defendants’ common policy and plan that violated their rights under the FLSA by paying employees overtime at a rate less than the one and one-half times the regular rate. At all times relevant, Defendants’ unlawful policy and pattern or practice has been willful.

63. Plaintiffs and Class Members laborer for Defendants, performing the work of a steamfitter, carpenter, and general laborer.

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

- a. Willfully failing to pay their employees, including Plaintiff and Class Members, overtime wages at the proper rate; and
- b. Willfully failing to pay their employees, including Plaintiff and Class Members, overtime wages for all overtime hours worked during the workweek.

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

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

67. Defendants’ unlawful conduct has been widespread, repeated, and consistent.

**PLAINTIFFS’ FACTUAL ALLEGATIONS**

***Plaintiff Hector Rivera***

68. Hector Rivera was an employee of Defendants, working under their direct supervision.

69. Hector Rivera worked for Defendants as a laborer from approximately 2011 through June 2018.

70. At all times relevant, Hector Rivera was a non-exempt employee. Defendants were required to pay him at the rate of one and one-half time his regular hourly rate for all hours worked over 40 in a workweek under the FLSA and NYLL.

71. Throughout his employment, Hector Rivera worked over 40 hours a week for Defendants.

72. For example, from approximately 2012 through 2015, Hector Rivera regularly worked from at least 7:00 am to 3:00 pm at Defendants' jobsites Monday through Saturday.

73. From approximately about 2015 through the end of 2017, however, Hector Rivera also worked a second shift each day lasting from about 7:00 pm to 4:00 am.

74. Despite regularly working over 40 hours a week, Defendants repeatedly failed to pay Plaintiff at the proper overtime rate for all hours worked.

75. First, Defendants did not pay Plaintiff any overtime prior to approximately October 2016. That is, during this period, Defendants only paid his \$10 an hour for all hours of work spent on the jobsite.

76. Then, after about October 2016, Defendants repeatedly failed to pay him at the proper overtime rate.

77. For instance, on the week ending December 19, 2017, Defendants paid Hector Rivera for 40 hours of work at the prevailing wage rate of \$100.79 an hour and for 19 hours of work at only \$20 an hour, instead of at time and one-half his regular, non-overtime rate for that week.

78. Finally, throughout his employment, Hector Rivera was required to perform work at Defendants' facility, before driving to and arriving at the jobsite, which was not paid.

79. In workweeks in which he worked more than 40 hours, he was not paid for this time at the proper overtime rate.

80. In workweeks in which he worked less than 40 hours, he was not paid for this time at his regular hourly rate.

81. To work for Defendants, Hector Rivera was required to purchase and use certain tools.

82. Defendants did not reimburse Hector Rivera for the tools he purchased.

83. Defendants did not provide Hector Rivera with an accurate wage statement. That is, the paystub issued to Plaintiff regularly lacked, among other things, Defendants' address, phone number, and the rate or rates of pay and basis thereof.

***Plaintiff Marco Rivera***

84. Marco Rivera was an employee of Defendants, working under their direct supervision.

85. Marco Rivera worked for Defendants as a laborer from approximately 2009 through June 2018.

86. At all times relevant, Marco Rivera was a non-exempt employee. Defendants were required to pay him at the rate of one and one-half time his regular hourly rate for all hours worked over 40 in a workweek under the FLSA and NYLL.

87. Throughout his employment, Marco Rivera worked over 40 hours a week for Defendants.

88. For example, from approximately 2012 through 2015, Marco Rivera regularly worked from at least 7:00 am to 3:00 pm at Defendants' jobsites Monday through Saturday.

89. From approximately 2015 through the end of 2017, however, Marco Rivera also worked a second shift each day lasting from about 7:00 pm to 4:00 am.

90. Despite regularly working over 40 hours a week, Defendants repeatedly failed to pay Plaintiff at the proper overtime rate for all hours worked.

91. For instance, on the week ending December 19, 2017, Defendants paid Marco Rivera for 40 hours of work at the prevailing wage rate of \$100.79 an hour and for 20 hours of work at only \$18 an hour, instead of at time and one-half his regular, non-overtime rate for that week.

92. Finally, throughout his employment, Marco Rivera was required to perform work at Defendants' facility, before driving to and arriving at the jobsite, which was not paid.

93. In workweeks in which he worked more than 40 hours, he was not paid for this time at the proper overtime rate.

94. In workweeks in which he worked less than 40 hours, he was not paid for this time at his regular hourly rate.

95. To work for Defendants, Marco Rivera was required to purchase and use certain tools.

96. Defendants did not reimburse Marco Rivera for the tools he purchased.

97. Defendants did not provide Marco Rivera with an accurate wage statement. That is, the paystub issued to Plaintiff regularly lacked, among other things, Defendants' address, phone number, and the rate or rates of pay and basis thereof.

**FIRST CAUSE OF ACTION**

**FLSA – Overtime Wages**

**(Brought on behalf of Plaintiffs and the FLSA Collective)**

98. Plaintiffs incorporate by reference all preceding allegations.

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

100. Defendants employed Plaintiffs and members of the FLSA Collective for workweeks longer than 40 hours and willfully failed to compensate Plaintiff at a rate of at least one and one-half times their regular rate for all hours over 40, in violation of the requirements of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

101. 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* Ex. A.

102. Defendants failed to make a good faith effort to comply with the FLSA with respect to compensating Plaintiff and the FLSA Collective.

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

104. As a result, Plaintiffs suffered damages and are owed back wages, liquidated damages and/or interest, and attorneys' fees and costs, as provided by the FLSA, in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**

**NYLL – Unpaid Overtime**

**(Brought on behalf of Plaintiffs)**

105. Plaintiffs incorporates by reference all preceding allegations.

106. Defendants employed Plaintiffs for workweeks longer than 40 hours and willfully failed to compensate Plaintiff at a rate of at least one and one-half times their regular rate for all hours over 40, in violation of the requirements of the NYLL.

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

108. Defendants had a policy and practice of refusing to pay overtime compensation at the proper rate to Plaintiffs.

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

110. As a result, Plaintiffs suffered damages and are owed back wages, liquidated damages, interest, and attorneys' fees and costs, as provided by the NYLL, in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**NYLL – Unpaid Non-Overtime Wages**  
**(Brought on behalf of Plaintiffs)**

111. Plaintiffs incorporates by reference all preceding allegations.

112. Plaintiffs were entitled to their regular hourly wage for each hour they worked for Defendant up to and including 40 per week.

113. Defendants employed Plaintiffs and willfully failed to compensate Plaintiffs and members of the New York Class at the regular hourly rate for the time spent performing work off of Defendants' jobsite, up to and including 40 hours per week, in violation of the requirements of the NYLL, specifically N.Y. Lab. Law § 661(3).

114. The complete records concerning the number of hours worked by Plaintiffs as well as the compensation Plaintiffs received in workweeks in which unpaid 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.

115. By the course of conduct set forth above, Defendants violated N.Y. Lab. Law § 650, *et seq.*

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

117. Defendants had a policy and practice of refusing to pay overtime compensation for all hours worked to Plaintiffs.

118. Defendants' failure to pay compensation to Plaintiffs and members of the New York Class was willful within the meaning of N.Y. Lab. Law § 663.

119. As a result, Plaintiffs suffered damages and are owed back wages, liquidated damages, interest, and attorneys' fees and costs, as provided by the NYLL, in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**NYLL – Unlawful Wage Deduction**  
**(Brought on behalf of Plaintiffs)**

120. Plaintiffs incorporates by reference all preceding allegations.

121. Defendants knowingly, willfully, and intentionally violated N.Y. Lab. Law § 193 and 12 N.Y.C.R.R. § 195-4.5 when Defendants required Plaintiffs to reduce their wages by paying for tools to be used in the course of their employment with Defendants.

122. As a result, Plaintiffs suffered damages and are owed the value of the tools purchase, liquidated damages, interest, and attorneys' fees and costs, as provided by the NYLL, in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**NYLL – Notice and Record-Keeping Requirement Violation**  
**(Brought on behalf of Plaintiffs)**

123. Plaintiffs incorporates by reference all preceding allegations.

124. Defendants failed to supply Plaintiffs with an accurate statement of wages as required by N.Y. Lab. Law § 195 and 12 N.Y.C.R.R. § 142-2.7 containing, among other things, Defendants' address, phone number, and the rate or rates of pay and basis thereof.

125. Due to Defendants' violations of N.Y. Lab. Law § 195, for each workweek that Defendants failed to provide a proper wage statement, Plaintiffs 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, together with attorneys' fees and costs.

**PRAYER FOR RELIEF**

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

A. That, at the earliest possible time, Plaintiffs be allowed to give notice to the FLSA Collective, or that the Court issue such notice. 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 wages and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

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

D. Unpaid non-overtime wages and liquidated damages permitted by law pursuant to the NYLL;

E. The value of the tools Defendants required Plaintiffs to purchase and liquidated damages permitted by law pursuant to the NYLL;

- F. Pre-judgment interest and post-judgment interest as provided by law;
- G. Appropriate equitable and injunctive relief to remedy violations;
- H. Attorneys' fees and costs of the action;
- I. Issuance of a declaratory judgment that the practices complained of in this action are unlawful;
- J. Reasonable incentive awards for Plaintiffs to compensate them for the time they spent attempting to recover wages for the FLSA Collective and for the risks they took in doing so; and
- K. Such other relief as this Court shall deem just and proper.

Dated: Melville, New York  
July 17, 2018

Respectfully submitted,

/s/ Troy L. Kessler  
Troy L. Kessler

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