

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CARLOS RODRIGUEZ, on behalf of himself and all others	: Case No.: 15 Civ. 5925
similarly situated,	:
	: <b>CLASS ACTION COMPLAINT</b>
	:
Plaintiff,	:
- against -	:
	:
JOSEPH ELETTO TRANSFER, INC.,	:
I. WILLIAMS ASSOCIATES, INC.,	:
and SLEEPY’S, LLC,	:
	:
Defendants.	:
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Plaintiff Carlos Rodriguez, on behalf of himself and all others similarly situated, by and through his attorneys Shulman Kessler LLP, Lichten & Liss-Riordan, P.C. and Marchetti Law, P.C., complaining of the Defendants Joseph Eletto Transfer, Inc., and I. Williams Associates, Inc., and Sleepy’s, LLC alleges as follows:

**I. INTRODUCTION**

1. Plaintiff Carlos Rodriguez (“Plaintiff”) brings this class action on behalf of himself and a class of persons similarly situated, who have performed delivery work for Defendants Joseph Eletto Transfer, Inc., I. Williams Associates, and Sleepy’s LLC, delivering goods from Sleepy’s, LLC, at any time during the applicable limitations period, and who were classified as independent contractors rather than employees. Plaintiff alleges that although Defendants classified him and other similarly situated delivery drivers as independent contractors, they were in fact Defendants’ employees under the New York Law, N.Y. Lab. Law §§ 190(2) and 862-b. Plaintiff further alleges that he and other similarly situated drivers were not paid proper wages and that improper deductions were made from their wages, in violation of New York Lab. Law § 193. Plaintiff also alleges that Defendants made illegal kick-backs of

wages in violation of New York Lab. Law § 198-b and failed to satisfy the notice and record-keeping requirements established by N.Y. Lab. Law §§ 191 and 195.

## **II. PARTIES**

2. Plaintiff Carlos Rodriguez is an adult resident of Baldwin, New York. Plaintiff Rodriguez worked for Defendants as a driver from approximately 2006 to 2011.

3. Defendant Joseph Eletto Transfer, Inc. (hereinafter “Eletto”) is a corporation under the laws of the State of New York with a principal office located in Hicksville, New York.

4. Defendant I. Williams Associates, Inc. (hereinafter “I. Williams”) is a corporation under the laws of the State of New York with a principal office located in Hicksville, New York.

5. Defendant Sleepy’s, LLC (hereinafter “Sleepy’s”) is a corporation organized under the laws of the State of Delaware, with a principal office located in Hicksville, New York.

6. Defendants are joint employers. On information and belief, Defendants Eletto and I. Williams operated as the same business, sharing common ownership, common management, a unified operation, and uniform employment practices. Additionally, Defendant Sleepy’s jointly maintained control, oversight, and direction with Eletto and I. Williams over the work of Plaintiff and similarly situated drivers.

7. This is a class action that the above-named Plaintiff brings on his own behalf and on behalf of all others similarly situated, namely all individuals who have performed delivery services for Defendants within the State of New York at any time during the applicable limitations period, and who were classified as independent contractors rather than employees.

## **III. JURISDICTION AND VENUE**

8. The Court has personal jurisdiction over Plaintiff and the class he seeks to represent because they are citizens of the State of New York and/or worked for Defendants in the

State of New York, including this judicial district.

9. The Court has personal jurisdiction over Defendants because they do business in the State of New York, including in this judicial district, and their conduct in the State of New York underlies all claims.

10. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). Taken individually, Plaintiff's claims exceed \$75,000 and Plaintiff's class claims in total exceed \$5 million.

11. Venue is proper pursuant to 28 U.S.C. § 1391, as the principal place of business of Defendants is located within Nassau County in the State of New York.

#### **IV. STATEMENT OF FACTS**

12. Defendant Sleepy's sells mattresses and other bedroom furnishings to customers. Sleepy's delivers its products to customers' homes as a core element of its business. In order to carry out its deliveries, Sleepy's contracts with Defendants Joseph Eletto and I. Williams which in turn contract with individuals such as the Plaintiff and other similarly situated delivery drivers, whom they purport to classify as independent contractors, to drive delivery trucks full-time and delivery retail merchandise to customer's residences.

13. Defendants Joseph Eletto and I. Williams provide residential delivery services for merchants in the home furnishings industries, including for Sleepy's. On information and belief, Eletto and I. Williams are the same business, operating out of the same principal place of business, and operated by the same individuals.

14. Sleepy's has a warehouse, which it either owns or leases in Hicksville, New York, from which drivers working for Defendants deliver Sleepy's merchandise to residences in New York.

15. Defendants provide deliveries from the Hicksville warehouse to retail customers through the named Plaintiff and other similarly situated delivery drivers. Sleepy's employees, as well as employees of Eletto and I. Williams, work in the Hicksville warehouse, organizing and conducting delivery operations.

16. Plaintiff, as well as other similarly situated delivery drivers whom they seek to represent in this action deliver or formerly delivered Sleepy's merchandise for Eletto and I. Williams from the Hicksville warehouse to residences in New York as well as in other states.

17. Defendants classify Plaintiff and other drivers as independent contractors and required Independent Contractor Agreements from them stating that they are independent contractors.

18. Defendants require the delivery drivers with whom they contract to provide trucks, which the drivers either own or lease. Defendants require the delivery drivers' trucks to bear Sleepy's logos on the truck trailers, along with either the Eletto or I. Williams logo on the truck cab. The trucks also must bear Eletto's or I. William's Department of Transportation number.

19. Plaintiff and other similarly situated drivers make regular deliveries from the Hicksville warehouse five to six days per week, working exclusively for Defendants and exclusively delivering Sleepy's goods. Usually Plaintiff and similarly situated delivery drivers worked full time, approximately forty-five to sixty hours per week. Approximately 20 trucks make deliveries from the warehouse each day.

20. Although Plaintiff and other similarly situated delivery drivers were classified as independent contractors of Eletto and I. Williams, Eletto, I. Williams, and Sleepy's retained the right to control and did indeed control nearly every aspect of the delivery drivers' work. Such

control includes, but is not limited to the following:

- a) Defendants required Plaintiff and similarly situated drivers to use helpers whom Defendants must approve to assist them in making deliveries. Defendants have required Plaintiff and similarly situated drivers to terminate certain helpers;
- b) Each work day, managerial employees of Joseph Eletto and I. Williams instructed Plaintiff and similarly situated drivers to report to the Hicksville warehouse by 5:00 a.m., at which time, Sleepy's managers provided Plaintiff and other similarly situated drivers with manifests listing the deliveries to be made that day;
- c) Sleepy's managers issued manifests to Plaintiff and similarly situated drivers to determine what goods were delivered, where the deliveries were to be made, and the timeframes within which deliveries were to be made. Plaintiff and similarly situated drivers had no discretion with respect to the number of deliveries made, the order in which deliveries were made, or the time frames within which deliveries had to be made.
- d) Plaintiff and similarly situated drivers had no power to refuse delivery stops assigned by Sleepy's. If the drivers refused to make deliveries that were assigned to them, Defendants would impose chargebacks;
- e) Plaintiff and similarly situated drivers then loaded their trucks with the merchandise to be delivered that day. They were required to leave the Hicksville warehouse by a certain time each day. If they did not, they could be subjected to "fines" or otherwise disciplined by Defendants;

- f) Plaintiff and similarly situated drivers did not negotiate with retail customers regarding the rates charged for their services, and they did not contract with the customers independent of Defendants;
- g) Sleepy's, Eletto, and I. Williams had managerial employees present at the Hicksville warehouse, who supervised the loading of the goods to be delivered;
- h) Plaintiff and similarly situated drivers were required to wear uniform with certain colored pants or shorts, and blue shirt that stated the word "Professional";
- i) Plaintiff and similarly situated drivers' deliveries were monitored by Defendants throughout the day. Plaintiff and similarly situated drivers were required to be in contact with Sleepy's dispatchers regarding the status of deliveries. If drivers encountered any problems with a delivery, they were required to communicate with Sleepy's dispatchers for instructions;
- j) Plaintiff and similarly situated drivers were required to get signatures from customers when deliveries were made; and
- k) Defendants evaluated Plaintiff's and similarly situated drivers' performances and graded them accordingly, using performing matrices.

21. Plaintiff and other similarly situated drivers performed services delivering Sleepy's goods, which was/is within the usual course of business of Defendants. Indeed, Eletto's website touts its home delivery services: "Our nationwide network of services includes the ability to deliver your product from a distribution center to a customer's residence confidently

and by your direction and deadline.” Moreover, Sleepy’s website promotes its “white-glove service,” and states that “Sleepy’s extensive delivery network and distribution centers allow us to deliver over 3,000 mattresses every day to bedrooms across the U.S. as early as the next day. Morning, Day or Evening. Only Sleepy’s lets you choose your delivery time.”

22. Plaintiff and other similarly situated drivers were not engaged in an independently established, trade, occupation, profession or business similar to their services performed for Defendants. Plaintiff and other similarly situated delivery drivers were entirely dependent upon Defendants for their work, as they were not allowed to and, as a practical matter, could not work for other employers, given the full-time nature of their work for Defendants and Defendants’ logos on their trucks.

23. Plaintiff and other similarly situated drivers were paid on a per stop basis for deliveries.

24. Plaintiff and other similarly situated drivers were required to pay for their own workers’ compensation insurance, liability insurance, and other job related insurance. These amounts were deducted from Plaintiff’s weekly settlement statements by Defendants. In addition, Defendants required all drivers, including Plaintiff, to place monies into an escrow account purportedly to cover damage claims made by third parties.

25. When Defendants determine in their sole discretion, that a delivery has been made in a manner they deem to be unsatisfactory (e.g. damaged goods, damage to customer property, etc.), Defendants deduct the costs of such damage from the compensation paid to the delivery drivers who cannot appeal such deductions. Additionally, Defendants made deductions from Plaintiff’s and other similarly situated drivers’ compensation checks for such things as uniforms and truck lease payments.

26. Defendants unlawfully received kick-backs from Plaintiff and other similarly situated drivers, and made a statement or representation that failure to provide these kick-backs would result in termination.

27. Defendants failed to furnish Plaintiff and other similarly situated drivers with a wage notice containing their rate of pay and basis thereof, hourly rates of pay, and overtime rates of pay, the designated pay day, the name of the employer, the employer's address and telephone number, and any other material and necessary information.

28. Defendants failed to furnish Plaintiff and other similarly situated drivers with an accurate statement of wages listing hours worked, rates paid, gross wages, allowances, deductions taken, and net wages paid.

29. Upon information and belief, Defendants did not keep accurate records of hours worked by Plaintiff and other similarly situated drivers.

**V. CLASS ACTION ALLEGATIONS**

30. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all similarly situated current and former drivers, namely, all other individuals who have performed delivery services for Defendants within the State of New York at any time during the six (6) years prior to the filing of this Complaint to the entry of judgment in the case, and who were classified as independent contractors rather than employees (hereinafter the "Plaintiff Class").

31. The persons in the Plaintiff Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and facts upon which the calculation of that number can be based are presently within the sole control of Defendants, upon information and belief, the size of the Plaintiff Class is at least 40 individuals.

32. Plaintiff's claims are properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3). There are questions of law and fact common to the Plaintiff Class that predominate over any questions solely affecting individual members of the Plaintiff Class, including but not limited to:

- a) Whether Plaintiff and the Plaintiff Class were Defendants' employees pursuant to N.Y. Lab. Law §§ 190(2) and 862-b;
- b) Whether Defendants made unlawful deductions from Plaintiff's and the Plaintiff Class's pay; and
- c) The nature and extent of Plaintiff Class-wide injuries and the appropriate measure of damages sustained by Plaintiff and the Plaintiff Class for unlawful deductions.

33. Plaintiff's claims are typical of those of the Plaintiff Class. Plaintiff and the other Plaintiff Class members were subjected to Defendants' policies, practices, programs, procedures, protocols, and plans alleged herein concerning the failure to pay proper wages. Plaintiff's job duties are typical of those of the class members.

34. The named Plaintiff is an adequate representative of the class because all potential plaintiffs were subject to Defendants' uniform practices and policies. Further, the named Plaintiff and potential class plaintiffs have suffered the same type of economic damages as a result of Defendants' uniform practices and policies.

35. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff's counsel is competent and experienced in litigating large wage and hour class and collective actions.

36. 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 Plaintiff 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 Plaintiff Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. Moreover, members of the Plaintiff Class still employed by Defendants may be reluctant to raise individual claims for fear of retaliation. 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.

**FIRST CAUSE OF ACTION**  
**NYLL – Unlawful Wage Deductions**  
**(Brought on behalf of Plaintiff and the Plaintiff Class)**

37. Plaintiff realleges and incorporates by reference herein all allegations in all preceding paragraphs.

38. Plaintiff and similarly situated drivers were employees of Defendants pursuant to N.Y. Lab. Law §§ 190(2) and 862-b.

39. Defendants knowingly, willfully, and intentionally violated N.Y. Lab. Law § 193 by requiring that Plaintiff and the Plaintiff Class be subject to deductions from their compensation checks for any alleged damage or problem with any delivery, as well as to deductions for insurance, uniforms, and truck lease payments, among other deductions.

**SECOND CAUSE OF ACTION**  
**NYLL – Illegal Kick-Back of Wages**  
**(Brought on behalf of Plaintiff and the Plaintiff Class)**

40. Plaintiff realleges and incorporates by reference herein all allegations in all preceding paragraphs.

41. Plaintiff and similarly situated drivers were employees of Defendants, pursuant to N.Y. Lab. Law § 190(2) and 862-b.

42. Defendants violated N.Y. Lab. Law § 198-b by requiring that Plaintiff and the Plaintiff Class be subject to deductions from their compensation checks for any alleged damage or problem with any delivery, as well as to deductions for insurance, uniforms, and truck lease payments, among other deductions.

**THIRD CAUSE OF ACTION**  
**NYLL – Notice and Record-Keeping Requirement Violation**  
**(Brought on behalf of Plaintiff and Plaintiff Class)**

43. Plaintiff realleges and incorporates by reference herein all allegations in all preceding paragraphs.

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

45. Defendants failed to supply Plaintiff and the Plaintiff 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.

46. Plaintiff and other similarly situated drivers are entitled to damages of \$50 for each workweek that Defendants failed to provide a wage notice, or a total of \$2,500 per class member, and damages of \$100 for each workweek that Defendants failed to provide accurate wage statements, 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.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and the Plaintiff Class, seek the following relief:

- A. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Designation of Plaintiff as representative of the Rule 23 Class, and counsel of record as Class Counsel;
- C. Pre-judgment interest and post-judgment interest as provided by law;
- D. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;
- E. Attorneys' fees and costs of the action;

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

G. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 198 *et seq.*;

H. Reasonable incentive awards for Plaintiff to compensate him for the time they spent attempting to recover wages for the Class and for the risks they took in doing so;

I. Plaintiff's and the Plaintiff Class's damages as provided at trial, including damages for the deductions taken from their compensation checks;

J. Application of statutory liquidated damages;

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

Dated: Melville, New York  
October 14, 2015

Respectfully submitted,

By: /s/ Troy L. Kessler  
Troy L. Kessler

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