

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----	X
DAVID VECCHIONE, on behalf of himself and all	:
others similarly situated, and ROBIN GUADALUPI,	:
individually,	:
	: Index No.:
Plaintiffs,	: Date Filed: June 23, 2017
- against -	:
	: <u>SUMMONS</u>
CONSUMERS WAREHOUSE CENTER, INC. d/b/a	:
CONSUMERS KITCHEN & BATH, and JAMES S.	: Plaintiffs designate Nassau County as
BALOGA, JR., JAMES S. BALOGA, SR, individually,	: the Place of Trial
	:
Defendants.	:
-----	X

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs’ attorneys an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated, pursuant to C.P.L.R. § 503(c), is Defendants’ acts and omissions giving rise to the cause of action occurred, in substantial part, in Nassau County.

Dated: Melville, New York
June 23, 2017

Yours, etc.,

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

*Attorneys for Plaintiffs and the
Putative Class*

To:
Consumers Warehouse Center, Inc., 717 Broadway Avenue, Holbrook, New York 11741
James S. Baloga, Jr., 717 Broadway Avenue, Holbrook, New York 11741
James S. Baloga, Sr., 717 Broadway Avenue, Holbrook, New York 11741

4. While employed by Consumers, 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 Consumers's policy to deprive Plaintiffs of all of their earned overtime wages in violation of the NYLL.

5. In order to avoid paying Plaintiffs overtime premiums, Consumers misclassified its Designers as exempt employees and paid them a salary, plus a limited sales-based commission.

6. Vecchione (the "Class Representative") brings this action on behalf of himself and all similarly situated former Designers of Consumers 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

7. This Court has jurisdiction over this matter pursuant to N.Y. Lab. Law, Article 9, §§ 190 *et seq.*, and C.P.L.R. § 301.

8. This Court is the proper venue under C.P.L.R. § 503(c) because Defendants' acts and omissions giving rise to the cause of action occurred, in substantial part, in Nassau County.

THE PARTIES

Plaintiff David Vecchione

9. Vecchione is a resident of Suffolk County, New York.

10. At all times relevant to this Class Action Complaint, Vecchione was an "employee" within the meaning of N.Y. Lab. Law § 190(2).

11. Vecchione was employed by Defendants as a Designer from approximately July 2014 through February 2017.

Plaintiff Robin Guadalupi

12. Guadalupi is a resident of Queens County, New York.

13. At all times relevant to this Class Action Complaint, Guadalupi was an “employee” within the meaning of N.Y. Lab. Law § 190(2).

14. Guadalupi was employed by Defendants as a Designer from approximately August 2014 through April 2015.

Defendants

15. 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.

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

Defendant Consumers Warehouse Center, Inc.

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

18. Consumers Warehouse Center, Inc. was and still is doing business as Consumers Kitchen & Bath.

19. Consumers Warehouse Center, Inc. maintains its principal place of business at 717 Broadway Avenue, Holbrook, New York 11741.

20. Defendants maintain five showrooms, at the following locations, at which they employ Plaintiffs and other Designers:

- a. 717 Broadway Avenue, Holbrook ,NY 11741 (“Holbrook location”);

- b. 258 Commack Rd, Commack, NY 11725 (“Commack location”);
- c. 1250 Sunrise Hwy, Copiague, NY 11726 (“Copiague location”);
- d. 2280 Hempstead Tpke, East Meadow, NY 11554 (“East Meadow location”); and
- e. 600 Franklin Avenue, Franklin Square, NY 11010 (“Franklin Square location”).

21. Upon information and belief, Defendant Consumers Warehouse Center, Inc. maintains control, oversight, and direction over its operations and employment practices.

22. At all times hereinafter mentioned, Defendant Consumers Warehouse Center, Inc. was and still is an “employer” within the meaning of N.Y. Lab. Law § 190(3).

23. Defendant Consumers Warehouse Center, Inc. employed employees, including Plaintiffs.

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

25. Defendant Consumers Warehouse Center, Inc. applied the same employment policies, practices, and procedures to all Designers, including policies, practices, and procedures with respect to the failure to pay overtime wages and the failure to provide a minimum wage.

Defendant James S. Baloga, Jr.

26. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. owns and/or operates Consumers Warehouse Center, Inc.

27. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. is the Vice-President of Consumers Warehouse Center, Inc.

28. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. is a shareholder of Consumers Warehouse Center, Inc.

29. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. is a corporate officer of Consumers Warehouse Center, Inc.

30. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. is the Chief Operating Officer of Consumers Warehouse Center, Inc.

31. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. is an agent of Consumers Warehouse Center, Inc.

32. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. has the authority over personnel decisions for Consumers Warehouse Center, Inc.

33. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. has the authority over payroll decisions for Consumers Warehouse Center, Inc.

34. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. supervises employees of the Consumers Warehouse Center, Inc.

35. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Jr. has the authority to hire and fire employees for Consumers Warehouse Center, Inc.

36. James S. Baloga, Jr. has the power to make binding decisions for Consumers Warehouse Center, Inc.

37. James S. Baloga, Jr. has the power to transfer the assets or liabilities of Consumers Warehouse Center, Inc.

38. James S. Baloga, Jr. has the power to declare bankruptcy on behalf of Consumers Warehouse Center, Inc.

39. James S. Baloga, Jr. has the power to enter into contracts on behalf of Consumers Warehouse Center, Inc.

40. At all times hereinafter mentioned, James S. Baloga, Jr. was and still is an “employer” within the meaning of N.Y. Lab. Law § 190(3).

Defendant James S. Baloga, Sr.

41. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. owns and/or operates Consumers Warehouse Center, Inc.

42. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. is the President of Consumers Warehouse Center, Inc.

43. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. is a shareholder of Consumers Warehouse Center, Inc.

44. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. is a corporate officer of Consumers Warehouse Center, Inc.

45. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. is the Chief Executive Officer of Consumers Warehouse Center, Inc.

46. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. is an agent of Consumers Warehouse Center, Inc.

47. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. has the authority over personnel decisions for Consumers Warehouse Center, Inc.

48. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. has the authority over payroll decisions for Consumers Warehouse Center, Inc.

49. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. supervises employees of the Consumers Warehouse Center, Inc.

50. Upon information and belief, and at all times hereinafter mentioned, James S. Baloga, Sr. has the authority to hire and fire employees for Consumers Warehouse Center, Inc.

51. James S. Baloga, Sr. has the power to make binding decisions for Consumers Warehouse Center, Inc.

52. James S. Baloga, Sr. has the power to transfer the assets or liabilities of Consumers Warehouse Center, Inc.

53. James S. Baloga, Sr. has the power to declare bankruptcy on behalf of Consumers Warehouse Center, Inc.

54. James S. Baloga, Sr. has the power to enter into contracts on behalf of Consumers Warehouse Center, Inc.

55. At all times hereinafter mentioned, James S. Baloga, Sr. was and still is an “employer” within the meaning of N.Y. Lab. Law § 190(3).

NEW YORK CLASS ACTION ALLEGATIONS

56. The Class Representative brings the First and Second 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 current and former worked for Consumers as Designers, at any time during the six years prior to the filing of this Complaint, to the entry of the judgment in the case (the “Class”).

57. The persons in the 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.

58. Upon information and belief, the size of the Class is at least 100 individuals.

59. Common questions of law and fact exist as to the Class that predominate over any questions only affecting them individually and include, but are not limited to:

- a. Whether Defendants failed to pay proper overtime compensation for all work-hours and violated the NYLL 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 Class Representative and the 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 furnish the Class Representative and Class with an accurate statement of, inter alia, wages, hours worked, and rates paid as required by N.Y. Lab. Law § 195;
- e. The nature and extent of Class-wide injury and the appropriate measure of damages sustained by the Class Representative and the Class;
- f. Whether Defendants acted willfully or with reckless disregarding in their failure to pay the Class Representative and the Class; and
- g. The nature and extent of class-wide injury and the measure of damages for those injuries.

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

61. 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 the corporate defendant. The damages sustained by individual class members are small, compared to the expense and burden of individual prosecution of this litigation. Class action treatment will obviate unduly duplicative litigation and the possibility of inconsistent judgments.

62. Further, the Class Representative and the Class have been equally affected by Defendants' failure to pay proper wages and provide proper wage statement.

63. Members of the Class still employed by Defendants may be reluctant to raise individual claims for fear of retaliation.

64. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

65. The Class Representative's claims are typical of those of the Class. The Class Representative and the other 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.

66. 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 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 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.

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

COMMON FACTUAL ALLEGATIONS

68. Plaintiffs and the members of the Class (collectively “Class Members”) have been victims of Defendants’ common policy and plan that has violated their rights under the NYLL by requiring Designers to work unpaid hours, failing to pay Designers overtime wages, and failing to provide Designers with accurate wage statements.

69. At all times relevant, Defendants’ unlawful policy and pattern or practice has been willful.

Designer Training and Unpaid Overtime Wages

70. Upon information and belief, Defendants have a policy and pattern or practice to require Plaintiffs and Class Members to work deprive Designers in training (“Trainees”) of proper overtime pay by requiring them to work over 40 hour each week and misclassifying Trainees as exempt from the overtime requirements of the NYLL.

71. Defendants require Designers to go through an extensive training program.

72. The program is referred to as the Sales Management Trainee Program.¹

73. Defendants’ training program consists of three parts.

74. First, the training program focuses on bathroom design and general procedures.

These trainings are held in a classroom setting, and running each day for approximately four weeks.s

¹ See <https://consumerscareers.com/pdf/benefits/AppBenefitsSMTFullTimeOnly-032013.pdf> (last accessed June 11, 2017).

75. Generally, Trainees are in class from 8:45 am till 5:00 pm during the first and third stages of Defendants' training program

76. Next, for approximately two weeks, Defendants place the Trainees on the showroom floor to continue training while serving customers seeking bathroom designs.

77. When working the showroom floor, Trainees work the standard rotating schedule, which rotates between 47 and 49 scheduled hours of work per week.

78. Thereafter, trainees are placed back in the classroom for another four weeks to complete their training, focusing now on kitchen design.

79. In addition to their regularly schedule work, Trainees regularly have to study in the evenings, sometimes taking as long as 30 to 60 minutes per evening ("study time").

80. Defendants are aware or should be aware of all the work that Trainees perform studying.

81. In all, Trainees regularly work between 35 to 49 or more hours per week while in training.

82. Defendants, however, do not pay Trainees overtime pay at the rate and one and one-half their regular rate.

83. Rather, Defendants pay Trainees a weekly salary.

84. Upon information and belief, Defendants' failure to pay an overtime wage to Trainees is pursuant to a company-wide policy to misclassify Designers are exempt from the overtime requirements of the NYLL.

Designer Misclassification and Unpaid Overtime Wages

85. At the end of the training period, Designers are assigned to one of Defendants' five locations.

86. This assignment, however, not permanent. Defendants regularly move Designers from one location to another or require them to cover shifts at the other locations.

87. Regardless of which location a Designer works, their hours, pay, and job duties are substantially the same.

88. In accordance with Defendants' step-by-step procedures, Designers meet Defendants' customers in their showroom and assist customers in product selection and design. Designers administer Defendants' questionnaires, confirm the customers' dimensions, budgets, and design preferences, complete customers' designs using Defendants' computer software, prepare sales paperwork, and process orders and payments.

89. Defendants do not allow Designers to use their discretion or independent judgment in the exercise of their duties.

90. Rather, Designers must strictly adhere their conduct to Defendants' sales policies and procedures.

91. Defendants closely monitor Designers conduct in a number of ways.

92. Defendants make audio and video recordings of each Designers' interactions with customers.

93. On a weekly basis, Defendants' management team reviews these recordings. They then grade each Designers' performance and adherence to company policy. They then issue corrective actions and discipline – points – as necessary.

94. Defendants further control their Designers through their "Progressive Discipline" policy.

95. Pursuant to the disciplinary policy, Defendants issue Designers points for infractions of Defendants' rules and policies.

96. Defendants discipline Designers based upon the number of points they accumulate:

- 10 Points – An official warning of possible termination.
- 20 Points – One-day unpaid suspension.
- 30 Points – One-day unpaid suspension and a final warning.
- 35 Points – Termination.

97. Defendants use this point system to control Designers sales decisions as missteps in the sales and customer service processes will result in points. For example, Designers are given one point for a sales error, five pints for failure to follow procedures, and 10 points for improper customer relations.

98. Designers are paid a weekly base salary of \$800.

99. To earn income beyond their base salary, Designers must meet certain sales quotas.

100. Many Designers, however, neither reach these goals nor earn more than the base salary.

101. 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.

102. Defendants maintain the following business hours:

- Monday: 9:00 am - 9:00 pm
- Tuesday: 9:00 am - 9:00 pm
- Wednesday: 9:00 am – 5:00 pm
- Thursday: 9:00 am - 9:00 pm
- Friday: 9:00 am - 9:00 pm,
- Saturday: 9:00 am - 5:00 pm
- Sunday: 11:00 am - 4:00 pm²

² See <http://www.consumerskitchens.com/showrooms.htm> (last accessed June 11, 2017).

103. Defendants require Designers to work, at least, the following rotating schedule, ranging from approximately over 47 to 49 scheduled hours:³

WORK HOURS			
The position for which you are applying requires that you work the 3 week rotating schedule detailed below.			
Week 1	Week 2	Week 3	Closed Holidays
Monday - 8:45am to 9pm	Monday - OFF	Monday - 8:45am to 9pm	Easter
Tuesday - 8:45am to 9pm	Tuesday - 8:45am to 9pm	Tuesday - OFF	Thanksgiving
Wednesday - OFF	Wednesday - 8:45am to 5:30pm	Wednesday - 8:45am to 5:30pm	Christmas
Thursday - 8:45am to 9pm	Thursday - OFF	Thursday - 8:45am to 9pm	New Years Day
Friday - 8:45am to 9pm	Friday - 8:45am to 9pm	Friday - OFF	
Saturday - OFF	Saturday - 8:45am to 5pm	Saturday - 8:45am to 5pm	
Sunday - OFF	Sunday - 10:30am to 4pm	Sunday - 10:30am to 4pm	

Sales schedule averages 43 work hours per week, with a 3-day weekend built in every third week

104. Additionally, Designers regularly work on their days off to try and meet Defendants sales goals, complete the requisite paperwork, and avoid discipline.

105. Defendants are aware or should be aware of all the work that Designers perform work outside of their regularly scheduled hours.

106. Despite all of this mandatory overtime work, 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 NYLL.

107. Upon information and belief, Defendants' failure to pay an overtime wage is pursuant to a company-wide policy to misclassify Designers are exempt from the overtime requirements of the NYLL.

³ See <https://consumerscareers.com/pdf/applications/SalesManagementTraineeApplication.pdf>, at 4 (last accessed June 11, 2017).

Inaccurate Wage Statements

108. Upon information and belief, Defendants have a policy and pattern or practice of failing to provide Plaintiffs and Class Members with an accurate wage statement each pay period.

109. Defendants failed to list the hours worked on their Designers' pay stubs.

110. As a result, 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.

Defendants' NYLL Violations were Willful and Widespread

111. As part of their regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy that violates the 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;
- 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 NYLL; and
- 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.

112. Defendants were or should have been aware that the NYLL required them to pay their Designers premium overtime pay for all hours worked in excess of 40 per week.

113. Defendants were or should have been aware that the NYLL required them to pay their Designers their regularly hours rate for all hours worked while in training.

114. Defendants' failure to pay Plaintiffs and Class Members proper overtime wages was willful, intentional, and in bad faith.

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

116. Regardless of the location at which Plaintiffs and Class Members worked for Defendants, Defendants' policies and practices remained substantially the same.

INDIVIDUAL FACTUAL ALLEGATIONS

Plaintiff David Vecchione

117. Vecchione was employed by Defendants from in or about July 2014 through February 2017.

118. Vecchione was an employee of Defendants, working under their direct supervision.

119. From approximately July 2014 through August 2014, Vecchione was in Defendants' training program held at the Holbrook location.

120. Thereafter, Vecchione completed Phase II of the training program at the East Meadow location.

121. Then, he returned to Holbrook to complete Phase III of his training.

122. From in or about October 2014 through October 2015, Vecchione worked at the Copiague location.

123. From approximately October 2015 through his termination in February 2017, he was employed at the Holbrook location.

124. While employed in Defendants' training program, Vecchione regularly worked from home studying.

125. Through the duration of Vecchione's employment, he regularly worked over 40 hours each week in accordance with Defendants' training schedule and mandatory rotating schedule.

126. At all relevant times, Vecchione was required to be paid overtime pay at the statutory rate of one and one-half his regular rate of pay after he worked 40 hours in a workweek for Defendants.

127. Defendants, however, misclassified Vecchione as exempt from the overtime laws of New York and paid him a weekly salary.

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

129. Upon information and belief, Defendants did not keep accurate records of hours worked by Vecchione.

Plaintiff Robin Guadalupi

130. Gaudalupi was employed by Defendants from in or about August 2014 through April 2015.

131. Gaudalupi was an employee of Defendants, working under their direct supervision.

132. From approximately August 2014 through September 2014, Gaudalupi was in Defendants' training program held at the Holbrook location.

133. Thereafter, Guadalupi completed Phase II of the training program at the Holbrook location.

134. Then, she returned to Holbrook to complete Phase III of her training.

135. From in or about September 2014 through April 2015, Guadalupi worked at the Franklin Square location.

136. While employed in Defendants' training program, Guadalupi regularly worked from home studying.

137. Through the duration of Guadalupi's employment, she regularly worked over 40 hours each week in accordance with Defendants' training schedule and mandatory rotating schedule.

138. At all relevant times, Guadalupi was required to be paid overtime pay at the statutory rate of one and one-half her regular rate of pay after she worked 40 hours in a workweek for Defendants.

139. Defendants, however, misclassified Guadalupi as exempt from the overtime laws of New York and paid her a weekly salary.

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

141. Upon information and belief, Defendants did not keep accurate records of hours worked by Guadalupi.

FIRST CAUSE OF ACTION
NYLL – Unpaid Overtime
(Brought on behalf of the Plaintiffs and the Class)

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

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

144. Plaintiffs and the Class are covered by the NYLL.

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

146. Defendants failed to pay Plaintiffs and the members of the 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.

147. Defendants failed to pay Plaintiffs and Class Members overtime at a wage rate of one and one-half times their regular rate of pay.

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

149. Defendants' failure to pay overtime compensation to Plaintiffs and the Class was willful and intentional.

150. 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, liquidated damages, reasonable attorneys' fees and costs of the action, as provided for by NYLL Article 6 § 198, and pre-judgment and post-judgment interest.

SECOND CAUSE OF ACTION

**NYLL – Notice and Record-Keeping Requirement Violation
(Brought on behalf of Plaintiffs and the Class)**

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

152. Defendants failed to supply Plaintiffs and members of the 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.

153. 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 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.

154. 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 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.

155. 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 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.

156. 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 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 Court certify this case as a class action pursuant to Article 9 of the C.P.L.R., and authorize the issuance of notice to the Class;
- B. Designation of Plaintiff David Vecchione as the Class Representative, and counsel of record as Class Counsel;
- C. Unpaid overtime pay permitted by law pursuant to the NYLL and the supporting New York State Department of Labor Regulations;
- D. Statutory damages, as provided for by N.Y. Lab. Law §§ 195 and 198, for Defendants' violations of the notice and recordkeeping requirements pursuant to N.Y. Lab. Law § 195;
- E. Pre-judgment interest and post-judgment interest as provided by law;
- F. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;
- G. Attorneys' fees and costs of the action;
- H. Issuance of a declaratory judgment that the practices complained of in this action are unlawful under N.Y. Lab. Law § 190 *et seq.*;
- I. Such other injunctive and equitable relief as this Court shall deem just and proper;
- J. 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
- K. Such other relief as this Court shall deem just and proper.

Dated: Melville, New York
June 23, 2017

Respectfully submitted,

By: /s/ Garrett Kaske
Garrett Kaske

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Troy L. Kessler

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Putative Class*