

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GERSON LOPEZ, on behalf of himself, individually,
and on behalf of all others similarly-situated,

COMPLAINT

Plaintiff,

Docket No.: 1:18-cv-03828

-against-

Jury Trial Demanded

1923 SNEAKER, INC. d/b/a “AIR KICKS” and
YOUKYUNG CHOI, individually,

Defendants.

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Plaintiff, GERSON LOPEZ (“Plaintiff”), on behalf of himself, individually, and on behalf of all others similarly-situated, (collectively as “FLSA Plaintiffs”), by and through his attorneys, BORRELLI & ASSOCIATES, P.L.L.C., as and for his Complaint against 1923 SNEAKER, INC. d/b/a “AIR KICKS” (“1923 Sneaker”), and YOUKYUNG CHOI, individually, (both, together where appropriate, as “Defendants”), alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters as follows:

NATURE OF THE CASE

1. This is a civil action for damages and equitable relief based upon willful violations that Defendants committed of Plaintiff’s rights guaranteed to him by: (i) the overtime provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160; N.Y. Comp. Codes R. & Regs. (“NYCCRR”) tit. 12, § 142-2.2; (iii) the NYLL’s requirement that employers furnish employees with wage statements containing specific categories of accurate information on each payday, NYLL § 195(3); (iv) the NYLL’s requirement that employers furnish employees with a wage notice at the time of

hire containing specific categories of accurate information, NYLL § 195(1); and (v) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants - - a footwear and apparel store located in Far Rockaway, New York, and its chief executive officer who was Plaintiff's direct supervisor - - as both a sales associate and a store clerk from on or about March 12, 2012 until on or about March 18, 2018. As described below, throughout his employment, but as is relevant herein, for at least the six-year period pre-dating the commencement of this action ("the Relevant Period"), Defendants willfully failed to pay Plaintiff the wages lawfully due to him under the FLSA and the NYLL. Specifically, during at least the Relevant Period, Defendants required Plaintiff to work, and Plaintiff did in fact work, in excess of forty hours for each week or virtually each week, yet the Defendants failed to compensate Plaintiff at the rate of one and one-half times his regular rate of pay for all hours that he worked in excess of forty each week, and instead paid him at his straight-time rate of pay for all hours worked.

3. Furthermore, Defendants failed to provide Plaintiff with any wage statements on each payday or with any wage notice at the time of Plaintiff's hire, let alone accurate ones, both as the NYLL requires.

4. Defendants paid and treated all of their sales associates and store clerks in the same manner.

5. Accordingly, Plaintiff brings this lawsuit against Defendants pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of Defendants' willful violations of the FLSA.

6. Plaintiff brings claims under the NYLL on behalf of himself, individually, and on behalf of any FLSA Plaintiffs, as that term is defined below, who opt-in to this action.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq.* The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1367 over all claims arising under New York law.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(1), as one or more of the Defendants reside within this judicial district and both reside within New York, and pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claims for relief occurred within this judicial district.

PARTIES

9. At all times during the Relevant Period, Plaintiff worked for Defendants in New York and was an “employee” entitled to protection as defined by the FLSA, the NYLL, and the NYCCRR.

10. At all times during the Relevant Period, Defendant 1923 Sneaker was (and is) a New York corporation doing business as “Air Kicks,” and that is located at 19-23 Mott Avenue, Far Rockaway, New York 11691.

11. At all times during the Relevant Period, Defendant Choi was (and is) the chief executive officer of Defendant 1923 Sneaker. In that role, Defendant Choi personally managed and oversaw the day-to-day operations of Defendant 1923 Sneaker, and was ultimately responsible for all matters with respect to determining employees’ rates and methods of pay and hours worked. Furthermore, Defendant Choi had and exercised the power to hire and fire and approved all

personnel decisions with respect to Defendant 1923 Sneaker's employees, and personally made the decision to hire and fire Plaintiff and directly supervised Plaintiff's work.

12. At all times during the Relevant Period, both Defendants were "employers" within the meaning of the FLSA and the NYLL. Additionally, Defendant 1923 Sneaker's qualifying annual businesses exceed \$500,000.00, and 1923 Sneaker was (and is) engaged in interstate commerce within the meaning of the FLSA, as Defendants employed two or more employees, accepted payments in cash that naturally moved across state lines, accepted credit cards as a form of payment based on cardholder agreements with out-of-state companies, and sold footwear and related products that they had received from outside of New York, the combination of which subjects Defendants to the FLSA's overtime requirements as an enterprise.

COLLECTIVE ACTION ALLEGATIONS

13. Plaintiff seeks to bring this suit to recover from Defendants unpaid overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 216(b), individually, on his own behalf, as well as on behalf of those in the following collective:

Current and former "sales associates" and/or "store clerks," or those who worked in other similar positions, who at any time during the applicable FLSA limitations period performed any work for 1923 Sneaker and/or Choi, and who consent to file a claim to recover damages for overtime compensation that is legally due to them ("FLSA Plaintiffs").

14. Defendants treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: (1) performed similar tasks, as described in the "Background Facts" section below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours in a workweek; and (5) were not paid

the required one and one-half times their respective regular rates of pay for all hours worked per workweek in excess of forty.

15. At all relevant times, Defendants are and have been aware of the requirements to pay Plaintiff and all FLSA Plaintiffs at an amount equal to the rate of one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet they purposefully and willfully chose not to do so.

16. Thus, Plaintiff and all FLSA Plaintiffs are victims of Defendants' pervasive practice of willfully refusing to pay their employees overtime compensation for all hours worked per workweek above forty, in willful violation of the FLSA.

BACKGROUND FACTS

17. Defendant 1923 Sneaker is a footwear and apparel store located in Far Rockaway, New York.

18. Defendant Choi was and is the chief executive officer and day-to-day overseer of Defendant 1923 Sneaker who personally supervised Plaintiff during Plaintiff's employment with Defendants.

19. Defendants employed Plaintiff as a "sales associate" and "store clerk" from on or about March 12, 2012 until on or about March 18, 2018, with approximately the first two years of Plaintiff's employment as a sales associate and the last four years of Plaintiff's employment as a store clerk.

20. From on or about March 12, 2012 through approximately December 2014, Plaintiff's duties as a sales associate included but were not limited to: attending to customers; organizing the stock room; cleaning the glass windows and mirrors around the store; and selling shoes and merchandise.

21. From approximately January 2015 until on or about March 18, 2018, Plaintiff's duties as store clerk included but were not limited to: opening and closing the store; charging all merchandise being purchased by customers; counting cash in the registers at opening and closing; and checking money coming in through debit and credit transactions.

22. At all times throughout the Relevant Period, Defendants required Plaintiff to work, and Plaintiff did work approximately six days per week, from 9:30 a.m. until 8:00 p.m. without a scheduled or uninterrupted break each day, for a total of sixty-three hours worked each workweek.

23. From June 2012 until on or about December 31, 2013, Defendants paid Plaintiff \$7.50 per hour for all hours worked per week, including those in excess of forty. Subsequently, from on or about January 1, 2014 until on or about December 31, 2014, Defendants paid Plaintiff \$8.50 per hour for all hours worked per week, including those in excess of forty. Subsequently, from on or about January 1, 2015 until on or about December 31, 2017, Defendants paid Plaintiff \$9.50 per hour for all hours worked per week, including those in excess of forty. Finally, from on or about January 1, 2018 until on or about March 18, 2018, Defendants paid Plaintiff \$11.11 per hour for all hours worked per week, including those in excess of forty.

24. At all times throughout the Relevant Period, Defendants failed to pay Plaintiff at the rate of one and one-half times his respective hourly rate of pay for any hours that Plaintiff worked each week over forty.

25. For example, during the week of December 16 through December 22, 2013, Defendants required Plaintiff to work, and Plaintiff did work sixty-three hours, from 9:30 a.m. until 8:00 p.m. from Monday to Saturday, without taking an uninterrupted break during any of those days. For his work that week Defendants paid Plaintiff at the rate of \$11.63 per hour for all hours worked, including the twenty-three hours that Plaintiff worked that week in excess of forty.

26. Defendants paid Plaintiff on a weekly basis in cash.

27. On each occasion when Defendants paid Plaintiff, Defendants failed to provide Plaintiff with any wage statement, let alone statements that accurately listed, *inter alia*, Plaintiff's actual hours worked for that week and/or his straight and overtime rates of pay for all hours worked.

28. Defendants also did not provide Plaintiff with any wage notice at the time of his hire, let alone one that accurately listed any of the following: Plaintiff's regular and overtime rates of pay and basis thereof; his regular payday; his employers' name, physical address of their main office, mailing address if it differs, and telephone number; and any "doing business as" names used by his employer.

29. Defendants treated Plaintiff and FLSA Plaintiffs in the manner described above.

30. Each hour that Plaintiff and FLSA Plaintiffs worked was for Defendants' benefit.

31. Defendants acted in the manner described herein so as to minimize their overhead while maximizing profits.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime under the FLSA

32. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

33. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for all hours worked exceeding forty in a workweek.

34. As described above, Defendants are employers within the meaning of the FLSA, while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.

35. As also described above, Plaintiff and FLSA Plaintiffs worked in excess of forty hours per week, yet Defendants failed to compensate them in accordance with the FLSA's overtime provisions.

36. Defendants willfully violated the FLSA.

37. Plaintiff and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

38. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for Defendants' violations of the FLSA's overtime provisions.

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime under the NYLL and the NYCCRR

39. Plaintiff, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

40. NYLL § 160 and 12 NYCCRR § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for all hours worked exceeding forty in a workweek.

41. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL and the NYCCRR.

42. As also described above, Plaintiff, and any FLSA Plaintiff who opts-in to this action, worked in excess of forty hours in a workweek, yet Defendants failed to compensate them in accordance with the NYLL's and the NYCCRR's overtime provisions.

43. Plaintiff, and any FLSA Plaintiff who opts-in to this action, are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

44. Plaintiff, and any FLSA Plaintiff who opts-in to this action, are also entitled to liquidated damages, interest, attorneys' fees for Defendants' violations of the NYLL's and NYCCRR's overtime provisions.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS

Failure to Furnish Proper Wage Statements in Violation of the NYLL

45. Plaintiff, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

46. N.Y. Lab. Law § 195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.

47. As described above, Defendants are employers within the meaning of the NYLL, while Plaintiff, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL.

48. As also described above, Defendants, on each payday, failed to furnish Plaintiff, and any FLSA Plaintiff who opts-in to this action, with any wage statements on each payday, let alone accurate wage statements containing all of the criteria required under the NYLL.

49. Prior to February 27, 2015, pursuant to N.Y. Lab. Law § 198(1-d), Defendants are liable to Plaintiff, and any FLSA Plaintiff who opts-in to this action, in the amount of \$100.00 for each workweek that the violation occurred, up to a statutory cap of \$2,500.00.

50. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff, and any FLSA Plaintiff who opts-in to this action, in the amount of \$250.00 for each workday that the violation occurred, up to a statutory cap of \$5,000.00.

FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS
Failure to Furnish Proper Wage Notices in Violation of the NYLL

51. Plaintiff, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

52. NYLL § 195(1) requires that employers provide employees with a wage notice at the time of hire containing accurate, specifically enumerated criteria.

53. As described above, Defendants are employers within the meaning of the NYLL, while Plaintiff, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL.

54. As also described above, Defendants failed to furnish Plaintiff, and any FLSA Plaintiff who opts-in to this action, with any wage notice at their time of hire, let alone one accurately containing all of the criteria required under the NYLL.

55. Prior to February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, and any FLSA Plaintiff who opts-in to this action, in the amount of \$50.00 for each workweek after the violation initially occurred, up to a statutory cap of \$2,500.00.

56. On or after February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, and any FLSA Plaintiff who opts-in to this action, in the amount of \$50.00 for each workday after the violation initially occurred, up to a statutory cap of \$5,000.00.

DEMAND FOR A JURY TRIAL

57. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff and FLSA Plaintiffs demand a trial by jury on all claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and FLSA Plaintiffs demand judgment against Defendants as follows:

a. A judgment declaring that the practices complained of herein are unlawful and in willful violation of the aforementioned United States and New York State laws;

b. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

c. An order restraining Defendants from any retaliation against Plaintiff and/or FLSA Plaintiffs for participation in any form in this litigation;

d. Designation of this action as an FLSA collective action on behalf of Plaintiff and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA Plaintiffs, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

e. All damages that Plaintiff and FLSA Plaintiffs have sustained as a result of Defendants' conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiff and FLSA Plaintiffs would have received but for Defendants' unlawful payment practices;


- f. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;
- g. Designation of Plaintiff and his counsel as collective action representatives under the FLSA;
- h. Awarding Plaintiff and FLSA Plaintiffs their reasonable attorneys' fees, as well as their costs and disbursements incurred in connection with this action, including expert witness fees and other costs, and an award of a service payment to Plaintiff;
- i. Pre-judgment and post-judgment interest, as provided by law; and
- j. Granting Plaintiff and FLSA Plaintiffs such other and further relief as this Court finds necessary and proper.

Dated: New York, New York
July 2, 2018

Respectfully submitted,

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Far Rockaway, NY Sneaker Store Air Kicks Hit with Unpaid Overtime Lawsuit](#)
