

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**MICHAEL MCCUEN, for himself and all  
others similarly situated,**

**Plaintiff,**

v.

**MAINES PAPER & FOOD SERVICE,  
INC.,**

**Defendant.**

Case No.

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Michael McCuen (“Plaintiff”), by and through his undersigned attorneys, hereby makes the following allegations against Maines Paper & Food Service, Inc. (“Defendant” or “Maines”) concerning his acts upon actual knowledge and concerning all other matters upon information, belief and the investigation of his counsel:

**NATURE OF THE CASE**

1. Plaintiff brings this action to redress Defendant’s common policies and procedures that give rise to common violations of the New York Labor Law (“NYLL”) and New York Codes, Rules and Regulations (“NYCRR”) for all Maines Driver’s Helpers who: **1)** do not receive all wages due for work they perform, including overtime premium wages owed for hours worked in excess of forty per workweek (Count I); **2)** do not receive the applicable minimum wage as required by the NYLL (Count II); **3)** do not receive a “spread of hours” premium required by the NYLL and applicable regulations (Count III); **4)** do not receive wage notices that include the information required by the NYLL (Count IV); and **5)** do not receive wages statements that provide the information required by the NYLL (Count V).

2. Plaintiff brings his NYLL and NYCRR claims as a class action pursuant to Fed. R. Civ. P. 23 for a putative Class including all people who worked as a Maines Driver's Helper and made deliveries in the State of New York during the six years preceding the filing of this Complaint (the "Class").

### **THE PARTIES**

3. Plaintiff is an adult resident and citizen of Brackney, Pennsylvania (Susquehanna Co.). Plaintiff worked for Defendant as a Driver's Helper from November 2015 through March 2018. During this time, the majority of Plaintiff's work involved reporting to work at Defendant's Conklin, New York warehouse and making deliveries in New York State. Plaintiff is personally familiar with, and has been personally affected by, the policies and practices described in this Complaint.

4. Defendant is an independent foodservice distributor. Defendant is incorporated under New York law and maintains its principal place of business in Conklin, New York. Defendant is registered to do business in Pennsylvania as a foreign corporation.

### **JURISDICTION AND VENUE**

5. Pursuant to 42 Pa. Cons. Stat. Ann. § 5301(a)(2)(i) Defendant has consented to general personal jurisdiction in Pennsylvania because Defendant registered to do business in Pennsylvania as a foreign corporation.

6. This Court has jurisdiction in this case pursuant to 28 U.S.C.A. § 1332(a), because Plaintiff is a citizen of Pennsylvania, Defendant is a citizen of New York and the amount in controversy in this matter exceeds \$75,000.00.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because Plaintiff resides in this District, suffered the losses at issue in this District, and has done work for Defendant in this District.

### **OPERATIVE FACTS**

8. In New York City, the required minimum wage is currently \$13.00 per hour. See 12 N.Y.C.R.R. § 142-2.1(a)(1)(i). In the remainder of down-state New York (Nassau, Suffolk, and Westchester Counties) the required minimum wage is currently \$11.00 per hour. See 12 N.Y.C.R.R. § 142-2.1(a)(2). In the rest of New York State, the required minimum wage is currently \$10.40 per hour. See 12 N.Y.C.R.R. § 142-2.1(a)(3). The rate that applies is based on where the work is performed. See 12 N.Y.C.R.R. § 142-2.1(a).

#### **Failure To Pay All Wages Due Including Overtime Premium Wages**

9. At all relevant times, 12 N.Y.C.R.R. § 142-2.2 has required employers to pay their employees all wages owed for the hours they actually worked, including one and a half times their regular minimum rate each hour worked over forty.

10. Defendant has never paid Plaintiff or the Class members any overtime premium wages, even though they have routinely worked more than forty hours per week.

11. Furthermore, Defendant has occasionally suffered or permitted Plaintiff and the Class members to work more than fourteen hours per day without tracking this time or paying any wages for hours beyond fourteen per day.

#### **Failure To Pay The Applicable Minimum Wage**

12. At all relevant times, NYLL § 652 has required employers to pay their employees minimum regular and overtime wages pursuant to 12 N.Y.C.R.R. § 142-2.1.

13. Defendant has paid its Driver's Helpers, including Plaintiff, \$130.00 for an anticipated fourteen-hour work day, or \$260.00 for a scheduled two-day route. For the past year, Plaintiff has typically worked about 56 hours per week and been paid \$520.00 per week (four work days x \$130.00 per day = \$520.00), or \$9.28 per hour – a rate between \$1.12 per hour and \$3.72 per hour below the mandatory minimum wage rate.

**Failure To Pay The Required “Spread Of Hours” Premium**

14. At all relevant times, 12 N.Y.C.R.R. § 142-2.4 has required has required employers to pay their employees an additional hour of pay at the basic minimum hourly wage rate in any day they work more than ten hours.

15. Even though Defendant routinely suffers or permits Plaintiff and the Class members to work more than ten hours per day, it has not paid them an extra spread of hours premium on these days.

**Failure To Pay For Time Employees Were Required To Be Available**

16. At all relevant times, 12 N.Y.C.R.R. § 142-2.1(b) has required has required employers to pay their employees the minimum wage for all hours they are required to be available for work at a place it prescribes, because these hours are considered time worked.

17. Defendant has regularly required Plaintiff and the Class members to report to its warehouse in Conklin, New York and then drive to New York City where they would sleep in a hotel, make deliveries, and then drive back to Conklin, New York over a two-day period. During these trips, Defendant routinely required Plaintiff and Class members to be available for work at a place it prescribed but paid no wages for hours in which they were not actively driving or making deliveries.

**Failure To Provide Required Wage Notices**

18. At all relevant times, NYLL § 195(1)(a) has required employers to provide their non-exempt employees with wage notices stating their regular hourly rate of pay and overtime rate of pay at the time of hiring.

19. Even though Plaintiff and the Class members are non-exempt employees, Defendant did not provide them with wage notices sating their regular hourly rate of pay and overtime rate of pay at the time of hiring.

### **Failure To Provide Required Wage Statements**

20. At all relevant times, NYLL § 195(3) has required employers to provide their non-exempt employees with wage statements with every paycheck that identify their regular hourly rate(s) of pay, overtime rate(s) of pay, number of regular hours worked and number of overtime hours worked.

21. Even though Plaintiff and the Class members are non-exempt employees, Defendant did not provide them with wage statements including their regular hourly rate(s) of pay, their overtime rate(s) of pay, their number of regular hours worked, or their number of overtime hours worked.

### **CLASS ACTION ALLEGATIONS**

22. Plaintiff brings his NYLL and NYCRR claims for himself and all people as a class action pursuant to Fed. R. Civ. P. 23 for a putative Class including all people who worked as a Maines Driver's Helper and made deliveries in the State of New York during the six years preceding the filing of this Complaint.

23. The Class specifically excludes Defendant, any parent, subsidiary, or affiliate of Defendant, any entity in which Defendant has a controlling interest, or which Defendant otherwise controls, any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendant.

24. Class treatment of Plaintiff's NYLL and NYCRR claims is appropriate because the putative Class satisfies the requirements of Fed. R. Civ. P. 23.

25. The putative Class is so numerous that joinder of all its members would be impracticable. During the relevant period, one hundred or more people have worked as a Maines Driver's Helper and made deliveries in New York.

26. Plaintiff's claims are typical of the claims of the putative Class members, and he has no interests that are antagonistic to, or in conflict with, the interests of the putative Class because:

- a. Plaintiff and the Class members all worked as Maines Driver's Helpers;
- b. Plaintiff and the Class members performed similar job duties for Defendant;
- c. Plaintiff and the Class members were subject to the same policies and procedures relating to their work, time and compensation, which had the common effect of failing to pay Plaintiff and the Class members minimum wage, overtime wages, "spread of hours" pay; and
- d. Plaintiff and the Class members were subject to the same policies and procedures related to the wage notices and wage statements they received, which had the common effect of failing to provide Plaintiff and the Class members with the information required under the NYLL regarding their regular and overtime rates of pay and hours worked at each rate.

27. There are many questions of law and fact common to the claims of the putative Class members because this action concerns the legality of Company-wide compensation policies and practices that raise many common questions, including:

- a. whether Defendant has failed to pay the Class members the minimum wage for each hour of work it suffered or permitted them to perform;
- b. whether Defendant has failed to pay the Class members for the time it required them to be available for work at a place prescribed by Defendant;
- c. whether Defendant has failed to pay the Class members all wages due for their work, including overtime premium wages owed for all hours over forty per workweek;
- d. whether Defendant has failed to pay the Class members an extra hour's pay for the "spread of hours" worked;
- e. whether Defendant has failed to provide the Class members with wage notices containing their regular hourly rate of pay and their overtime rate of pay; and

f. whether Defendant has failed to provide the Class members with wage statements regarding their regular hourly rate and overtime rate of pay, their number of regular hours worked and overtime hours worked.

28. Plaintiff will fairly and adequately protect the interests of the putative Class members and has retained competent and experienced counsel for this purpose.

29. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual Class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation for at least the following reasons:

a. absent a class action, Class members will be essentially unable to redress the conduct pled here, Defendant's violations will continue without remedy and Defendant's employees will continue to be harmed;

b. a class action will permit an orderly and expeditious administration of class claims, foster economies of time, effort and expense;

c. this lawsuit presents no particularly unusual or difficult issues that would impede its management as a class action; and

d. Defendant has acted on grounds generally applicable to Class members, making class-wide management appropriate.

30. Allowing Plaintiff's claims to proceed as a class action will be superior to requiring the individual adjudication of each Class member's claim, since requiring a hundred or more hourly-paid employees to file and litigate individual wage claims would cause an undue burden on Defendant, the Class members and the Courts. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expenses if these claims were brought individually. Moreover, as the damages suffered by each Class member are relatively small, the expenses and burdens associated with individual litigation would make it difficult for plaintiffs to bring individual claims. Further, the presentation of separate actions by individual

Class members could create a risk for inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of Class members to protect their interests.

**COUNT I**  
**Failure To Pay Wages Due In Violation Of NYLL**  
**(On Behalf of Plaintiff and the Class members)**

31. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

32. During the Class Period, Plaintiff and the Class members were “employees” within the meaning of NYLL §§ 2(7), 651(5), 190(2) and 12 N.Y.C.R.R. § 142-2.14.

33. During the Class Period, Defendant was an employer within the meaning of NYLL §§ 651(6) and 190(3).

34. During the Class Period, Plaintiff and the Class members have been entitled to the rights, protections and benefits provided under the NYLL §§ 650 *et seq.* and 190 *et seq.*

35. Plaintiff and the Class members are not exempt from overtime compensation as established by the commissioner’s wage orders or otherwise provided by New York State law or regulation.

36. The NYLL provides that employees have the following entitlement to overtime premium wages:

[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 U.S.C. 201 *et seq.*... In addition, an employer shall pay employees subject to the exemptions of section 13 of the Fair Labor Standards Act, as amended, except employees subject to sections 13(a)(2) and (4) of such Act, overtime at a wage rate of one and one-half times the basic minimum hourly rate.

*See* 12 N.Y.C.R.R. § 142-2.2.



37. During the Class Period, Defendant willfully violated the NYLL, Article 19, §§ 650, *et seq.* and 12 N.Y.C.R.R. § 142-2.2 by failing to pay Plaintiff and the Class members all wages due for work they performed, including overtime premium wages of not less than 1½ times the New York State minimum wage rate for each hour worked in excess of 40 hours per workweek.

38. Defendant has no good faith justification or defense for failing to pay Plaintiff and the Class members the overtime wages mandated by 12 N.Y.C.R.R. § 142-2.2.

39. NYLL § 663(1) provides that Plaintiff and the Class members are entitled to recover the full amount of their wage underpayments during the six years preceding the filing of this Complaint, plus periods of equitable tolling, an award of costs and reasonable attorneys' fees incurred in pursuing this claim, an award of prejudgment interest paid at the applicable legal rate and a penalty in the amount of 100% of the total payment due for the relevant period as it had no good faith basis to believe its wage payments to Plaintiff and the Class members complied with the NYLL.

**COUNT II**  
**Failure To Pay Minimum Wage In Violation of NYLL**  
**(On Behalf of Plaintiff and the Class Members)**

40. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

41. NYLL § 652 regulates the payment of minimum wages and provides that employers must pay their employees at a rate at least equal to the New York minimum wage rates provided by 12 N.Y.C.R.R. § 142-2.1.

42. During the Class Period, Defendant willfully violated the NYLL by paying Plaintiff and the Class members at hourly wage rates between \$1.12 per hour and \$3.72 per hour below the mandatory minimum wage rate applied in the locations they worked.

43. Furthermore, pursuant to 12 N.Y.C.R.R. § 142-2.1(b), an employer is required to pay employees the minimum wage for time they are permitted to work or are required to be available for work at a place prescribed by the employer.

44. During the Class Period, Defendant willfully violated the NYLL by failing to pay Plaintiff and Class members for the hours they were required to be available for work at a place prescribed by Defendant.

45. Defendant has no good faith justification or defense for failing to pay Plaintiff and the Class members the minimum wages mandated by 12 N.Y.C.R.R. § 142-2.1.

46. NYLL § 663(1) provides that Plaintiff and the Class members are entitled to recover the amount of their unpaid minimum wages during the six years preceding the filing of this Complaint, plus periods of equitable tolling, an award of costs and reasonable attorneys' fees incurred in pursuing this claim, an award of prejudgment interest paid at the applicable legal rate and a penalty in the amount of 100% of the total payment due for the relevant period as it had no good faith basis to believe its wage payments to Plaintiff and the Class members complied with the NYLL.

**COUNT III**  
**Failure To Pay "Spread Of Hours" Premium In Violation of NYLL**  
**(On Behalf of Plaintiff and the Class Members)**

47. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

48. The NYLL requires employers to provide "spread-of-hours" pay in addition to the New York minimum wage for any day in which an employee's "spread of hours" exceeds ten hours. *See* 12 N.Y.C.C.R. § 142-2.4.

49. During the Class Period, Defendant willfully violated the NYLL by routinely scheduling Plaintiff and the Class members to work an anticipated fourteen-hour workday (*i.e.*,

more than ten hours per workday) and failing to provide Plaintiff and the Class members with “spread of hours” pay for any of their workdays of more than ten hours.

50. Defendant has no good faith justification or defense for failing to pay Plaintiff and the Class members the overtime wages mandated by 12 N.Y.C.R.R. § 142-2.4.

51. NYLL § 663(1) provides that Plaintiff and the Class members are entitled to recover one hour’s pay at the required rate for each day they worked over ten hours during the six years preceding the filing of this Complaint, plus periods of equitable tolling, an award of costs and reasonable attorneys’ fees incurred in pursuing this claim, an award of prejudgment interest paid at the applicable legal rate and a penalty in the amount of 100% of the total amount due for the relevant period as it had no good faith basis to believe its wage payments to Plaintiff and the Class members complied with the NYLL.

**COUNT IV**  
**Failure To Provide Wage Notices In Violation of NYLL**  
**(On Behalf of Plaintiff and the Class Members)**

52. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

53. NYLL §§ 195(1) requires employers to provide employees with a notice at the time of hire that states their regular hourly wage rate and their overtime rate of pay.

54. During the Class Period, Defendant willfully violated NYLL § 195(1) by failing to provide Plaintiff and the Class members a notice at the time of hire that states their regular hourly wage rate and their overtime rate of pay.

55. Defendant has no good faith justification or defense for failing to provide the notice mandated by NYLL §§ 195(1).

56. NYLL § 198(1-b) provides that Plaintiff and the Class members are entitled to recover \$50.00 dollars for each workday following their tenth day of employment on which

Defendant failed to provide the required wage notice up to of \$5,000.00 each plus an award of costs and reasonable attorneys' fees incurred in pursuing this claim.

**COUNT V**  
**Failure To Provide Required Wage Statements In Violation of NYLL**  
**(On Behalf of Plaintiff and the Class Members)**

57. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

58. NYLL § 195(3) requires employers to provide employees with a wage statement each pay period that includes their regular hourly rate(s) of pay, their overtime rate(s) of pay, their number of regular hours worked and their number of overtime hours worked.

59. During the Class Period, Defendant willfully violated NYLL § 195(3) by failing to supply Plaintiff and the Class members with a wage statement each pay period that includes their regular hourly rate(s) of pay, their overtime rate(s) of pay, their number of regular hours worked and their number of overtime hours worked.

60. Defendant has no good faith justification or defense for failing to provide the notice mandated by NYLL §§ 195(3).

61. NYLL § 198(1-b) provides that Plaintiff and the Class members are entitled to recover \$50.00 dollars each time Defendant failed to provide them with the required wage statement in the last six years, plus periods of equitable tolling, up to a total of \$5,000.00 each plus an award of costs and reasonable attorneys' fees incurred in pursuing this claim.

WHEREFORE, Plaintiff respectfully prays for an Order:

- a. Certifying this action as a class action;
- b. Approving Plaintiff as an adequate Class representative;
- c. Appointing Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Stephen Zouras, LLP as Class Counsel;

- d. Authorizing Class Counsel to issue a notice informing the Class members this action has been filed, of the nature of the action, and of their right to opt out of this lawsuit;
- e. Finding that Defendant willfully violated the applicable state laws by failing to pay all required wages to Plaintiff and the Class members;
- f. Granting judgment in favor of Plaintiff and the Class members on all counts;
- g. Awarding all available compensatory damages in amounts to be determined;
- h. Awarding all available liquidated damages in amounts to be determined;
- i. Awarding pre-judgment interest on all compensatory damages due;
- j. Awarding a reasonable attorney's fee and reimbursement of all costs and expenses incurred in litigating this action;
- k. Awarding all available equitable and injunctive relief precluding the continuation of the policies and practices pled in this Complaint;
- l. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper; and
- m. Maintaining jurisdiction over this action to ensure Defendant's compliance with the foregoing.

**JURY TRIAL DEMAND**

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demands a trial by jury.

Respectfully Submitted,

Dated: April 30, 2018

/s/ David J. Cohen  
David J. Cohen  
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JS 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Michael McCuen

**DEFENDANTS**

Maines Paper & Food Service, Inc.

(b) County of Residence of First Listed Plaintiff Susquehanna Co. PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Broome Co. N.Y.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

David J. Cohen (215-873-4836)  
Stephan Zouras LLP, 604 Spruce Street, Phila., PA 19106

Attorneys (If Known)

N/A

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | <b>PTF</b>                            | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                            |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |   |
|---|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input checked="" type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement      |  |   |   |

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C.A. § 1332(a)

Brief description of cause:

Violations of the N.Y. Labor Law and N.Y. Codes, Rules and Regulations for unpaid wages.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE N/A

DOCKET NUMBER \_\_\_\_\_

DATE

April 30, 2018

SIGNATURE OF ATTORNEY OF RECORD

David J. Cohen

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFF \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Filed Against Maines Paper & Food Service Alleges New York Labor Law Violations](#)

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