

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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<b>JAMES MCDONALD, on behalf of</b>	:	
<b>himself and all others similarly situated,</b>	:	<b>Index No:</b>
	:	<b>Date Filed:</b>
<b>Plaintiff,</b>	:	
	:	
<b>-against-</b>	:	<b>SUMMONS</b>
	:	
<b>HAYMARKET MEDIA, INC.,</b>	:	
	:	
<b>Defendant,</b>	:	
-----X		

To: Haymarket Media, Inc.  
275 7<sup>th</sup> Avenue, 10<sup>th</sup> Floor  
New York, NY 10001

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the date of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial.

The basis for venue is Defendant's place of business.

Dated: April 8, 2021  
Roslyn, New York

THE LAW FIRM OF LOUIS GINSBERG, P.C.  
Attorneys for Plaintiff  
1613 Northern Boulevard  
Roslyn, NY 11576  
(516) 625-0105

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

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**JAMES MCDONALD, on behalf of himself and  
all others similarly situated,**

**Index No.:**  
**Date Filed:**

**Plaintiff,**

**COMPLAINT  
JURY TRIAL DEMANDED**

**-against-**

**HAYMARKET MEDIA, INC.,**

**Defendant.**

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Plaintiff James McDonald (“Plaintiff”), on behalf of himself and all others similarly situated, upon personal knowledge as to himself and upon information and belief as to others, by and through his undersigned counsel, alleges for his Complaint as follows:

**NATURE OF ACTION**

1. Plaintiff brings this action on behalf of himself and all other similarly situated non-exempt hourly paid employees (“Hourly Employees”) employed by Defendant Haymarket Media, Inc. (“Haymarket Media”) or (“Defendant”) in the State of New York at any time during the period commencing six (6) years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued (the “Class Period”). As described below, Defendant by virtue of its management and control over the wages and work of its Hourly Employees is classified as an “employer” under New York Labor Law (“NYLL”) §190(3).
2. As particularized below, Defendant has engaged and continues to engage in illegal and improper wage practices. These practices include: (a) requiring Hourly Employees to perform work without compensation during meal breaks; (b) requiring Hourly Employees to perform work without compensation outside of their scheduled shift; (c) requiring Hourly Employees to perform work without compensation from home and on days off; (d) failing to pay Hourly

Employees at their straight or agreed upon rate for all hours worked under forty (40) hours in a week; (c) failing to pay Hourly Employees overtime of time and one-half their regular rate of pay for all hours worked over forty (40) in a week; and (f) failing to provide accurate wages statements.

### PARTIES

3. Plaintiff James McDonald resides in New York County, New York. Plaintiff was, throughout his entire employment with Defendant, a covered, non-exempt employee within the meaning of the NYLL. As such, Plaintiff was, and is, entitled to be paid in full for all hours worked.

4. Defendant employed Plaintiff at its facility located at 275 7<sup>th</sup> Avenue, New York, New York 10001. Defendant maintained control, oversight, and direction over Plaintiff and the similarly situated Hourly Employees regarding time keeping, payroll, and other employment practices applicable to them.

### CLASS ACTION ALLEGATIONS

5. Plaintiff brings this action on his own behalf and as a class action pursuant to CPLR Article 9 of a Class consisting of:

All current and former Hourly Employees who worked for Defendant in the State of New York during the Class Period and who (a) were not compensated for all work performed during uncompensated meal breaks; (b) were not compensated for all work performed outside of their scheduled shift; (c) were not compensated for all work performed from home and/or on days off; (d) were not paid their straight or agreed upon rate for all hours worked under forty (40) hours in a week; (e) were not paid overtime of time and one-half their regular rate of pay for all hours worked over forty (40) in a week; and/or (f) were not provided accurate wage statements. (collectively the “Class” or “Class Members”).

6. Excluded from the Class are the Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Class Period has had, a controlling interest in Defendant, and all persons who submit timely and otherwise proper requests for exclusion from the Class.
7. During the Class Period, upon information and belief, the Defendant employed in excess of forty (40) Hourly Employees and systematically failed and refused to pay them for all compensable hours worked. The Class Members are so numerous that joinder of all members in one proceeding is impracticable.
8. Plaintiff's claims are typical of the claims of other Class Members because other non-exempt Hourly Employees were not compensated for all work performed. Plaintiff and other Class Members have sustained similar types of damages as a result of the Defendant's failure to comply with the NYLL. Plaintiff and other Class Members have been injured in that they have been uncompensated or under-compensated due to the Defendant's common policies, practices, and patterns of conduct.
9. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel competent and experienced in complex class action and wage and hour litigation. There is no conflict between the Plaintiff and Class.
10. Defendant has acted or has 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.
11. Common questions of law and fact exist as to the Class that predominate over any questions solely affecting them individually and include, but are not limited to, the following:

- a. Whether the Defendant failed and/or refused to pay Plaintiff and the Class for work performed during uncompensated meal breaks;
- b. Whether the Defendant failed and/or refused to pay Plaintiff and the Class for all of the compensable time that they worked for the Defendant outside of their scheduled shift;
- c. Whether the Defendant failed and/or refused to pay Plaintiff and the Class for work performed from home and/or on days off;
- d. Whether the Defendant failed and/or refused to pay Plaintiff and the Class for all hours worked under forty (40) in a week at the straight or agreed upon rate;
- e. Whether the Defendant failed and/or refused to pay Plaintiff and the Class overtime of time and one-half their regular rate of pay for all hours worked over forty (40) in a week;
- f. Whether the Defendant failed to keep true and accurate time records for all hours worked by Plaintiff and the Class Members as required by New York Labor Law § 190 *et seq.* and 650 *et seq.*;
- g. Whether the Defendant failed to comply with the posting and notice requirements of the NYLL;
- h. Whether the Defendant failed to provide Plaintiff and the Class Members with accurate statements with every payment of wages, listing accurate gross wages, deductions and accurate net wages as required by New York Labor Law § 195(3);
- i. Whether the Defendant engaged in a pattern and/or practice of forcing, coercing, and/or permitting Plaintiff and Class Members to perform work for Defendant's benefit which was not compensated;

- j. Whether the Defendant's policy of failing to pay workers was instituted willfully or with reckless disregard of the law;
  - k. The nature and extent of class-wide injury and the measure of damages of those injuries; and
  - l. Whether the Defendant should be enjoined from such violations of the NYLL in the future.
12. Class action treatment is superior to any alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. Individual Class Members' damages are inadequate to justify the costs of prosecuting their claims in any manner other than a class action. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Class Members are readily identifiable from the Defendant's records.
13. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the Defendant.
14. Without a class action, Defendant would retain the benefit of its wrongdoing and will continue a course of action that will result in further damages to Plaintiff and the Class.
15. Plaintiff intends to send notice to all members of the Class to the extent required by Article 9 of the CPLR.

### **FACTS**

16. Plaintiff was employed by Defendant from in or around February 2019 until in or around about March 2020 as an account strategist and from in or around March 2020 until on or about March 5, 2021 in customer service. Plaintiff was scheduled to work 9:00 a.m. to 5:00 p.m. Monday through Friday with a one (1) hour unpaid meal break for each shift. The Defendant promised to pay hourly wages to Plaintiff for his work. Plaintiff's last hourly wage was approximately \$17.00.

17. Plaintiff and other Class Members performed worked without compensation during their meal breaks that was integral and indispensable to their job duties at Defendant.

18. Plaintiff worked through approximately one (1) hour of his meal break one (1) to two (2) shifts per week. Such work performed during uncompensated meal breaks included, but was not limited to, putting together proposals, emailing clients, getting price quotes and attending meetings as an account strategist and included, but was not limited to, handling customer inquiries, responding to emails and telephone calls in customer service. Thus, because of Defendant's improper compensation policies, on average, Plaintiff was not paid for approximately one (1) to two (2) hours of work time per week during meal breaks in violation of the NYLL.

19. Plaintiff and other members of the Class worked outside of their scheduled shift without compensation. Plaintiff worked uncompensated approximately four (4) to eight (8) hours outside of his scheduled shift per week. Such work performed without compensation outside of his scheduled shift included, but was not limited to, putting together proposals, emailing clients, getting price quotes and attending meetings as an account strategist and included, but was not limited to, handling customer inquiries, responding to emails and telephone calls in customer service. Thus, because of Defendant's improper compensation policies, on average, Plaintiff was

not paid for four (4) to eight (8) hours of work time outside of his scheduled shift during a week in violation of the NYLL.

20. Additionally, Plaintiff and other Class Members worked from home including on days off without compensation. Plaintiff worked on average three (3) to four (4) hours a week from home and/or on days off. Such work performed without compensation outside of his scheduled shift included, but was not limited to, putting together proposals, emailing clients, getting price quotes and attending meetings as an account strategist and included, but was not limited to, handling customer inquiries, responding to emails and telephone calls in customer service. Thus, because of Defendant's improper compensation policies, on average, Plaintiff was not paid for three (3) to four (4) hours of work time from home and on days off per week in violation of the NYLL.

21. These uncompensated duties were integral and indispensable to the respective jobs performed by Plaintiff and the other Hourly Employees.

22. Thus, because of Defendant's improper compensation policies, Plaintiff was deprived of approximately five (5) hours of uncompensated straight time per week and approximately three (3) to nine (9) hours of uncompensated overtime per week in violation of the NYLL.

23. Defendant also failed to provide accurate wage statements to Plaintiff and the similarly situated Hourly Employees.

**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR NONPAYMENT OF WAGES IN VIOLATION OF THE NEW  
YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

24. Plaintiff incorporates paragraphs 1-23 as if fully rewritten herein.

25. Pursuant to New York Labor Law §§ 190 *et seq.* including but not limited to, §§190, 191, 193, 198, and 663(1), the Defendant has willfully failed to pay the straight or agreed upon wages due as set forth in the preceding paragraphs of this Complaint to Plaintiff and the Class in violation



of New York Labor Law §§ 190 *et seq.* including but not limited to, §§190, 191, 193, 198, and 663(1).

26. The Defendant was not and is not permitted by state or federal law or by order of a court of competent jurisdiction, to withhold or divert any portion of the Plaintiff's and the Class' wages that concern this lawsuit.

27. The Defendant was not authorized by Plaintiff or, upon information and belief, any Class Members to withhold, divert, or deduct any portion of their unpaid wages which are the subject of this lawsuit.

28. Pursuant to New York Labor Law § 198, employers such as the Defendant who intentionally fail to pay hourly employees wages in conformance with New York Labor Law shall be liable to the hourly employees for the wages that were intentionally not paid, and court costs and attorneys' fees incurred in recovering the unpaid wages.

29. The Defendant has violated the NYLL by failing to pay Plaintiff and the Class Members for all compensable time and by failing to pay Plaintiff and the Class Members for the straight or agreed upon wages worked at the established rate.

30. Plaintiff, on behalf of himself and the Class, seeks the amount of underpayments based on the Defendant's failure to pay straight or agreed upon wages for all hours worked as provided by the NYLL, as well as reasonable attorneys' fees and costs of the action, and such other legal and equitable relief as the Court deems just and proper.

31. Plaintiff does not seek liquidated damages under the NYLL on behalf of the Class but reserves his right to do so.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR NONPAYMENT OF OVERTIME IN VIOLATION OF THE  
NEW YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

32. Plaintiff incorporates paragraphs 1-31 as if fully rewritten herein.
33. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations 12 NYCRR 142-2.2 apply to Defendant and protect Plaintiff and the Class Members.
34. Defendant has failed to pay Plaintiff and the Class Members overtime wages to which they are entitled under the New York Labor Law and the supporting New York State Department of Labor Regulations.
35. By Defendant's knowing and/or intentional failure to pay Plaintiff and the Class Members overtime wages for all hours worked in excess of forty (40) hours in a week, Defendant has willfully violated New York Labor Law §§ 190, *et. seq.*, including but not limited to, §§190, 191, 193, 198, New York Labor Law §§ 650 *et. seq.*, and the supporting New York State Department of Labor Regulations.
36. Due to Defendant's violations of the NYLL, Plaintiff and the Class Members are entitled to recover from Defendant their unpaid overtime wages, attorneys' fees, costs, and pre-judgment and post-judgment interest.
37. Plaintiff does not seek liquidated damages under the NYLL on behalf of the Class but reserves his right to do so.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN  
VIOLATION OF THE NEW YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

38. Plaintiff incorporates paragraphs 1-37 as if fully rewritten herein.
39. Defendant has willfully failed to supply Plaintiff and the Class Members, as required by NYLL, Article 6, § 195(3) with an accurate statement with every payment of wages, listing accurate gross wages, deductions and accurate net wages.

40. Through its knowing or intentional failure to provide Plaintiff and the New York Class members with the accurate wage statements required by the NYLL, Defendant has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

41. Due to Defendant's willful violation of NYLL, Article 6, § 195(3), Plaintiff and the Class Members are entitled to damages of two hundred and fifty dollars for each day that Defendant failed to provide Plaintiff and the Class Members with an accurate wage statement, or a total of five thousand dollars for Plaintiff and for each Class Member, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided by NYLL, Article 6, § 198(1-d).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, seeks the following relief against the Defendant:

- (a) Certification of the Class as described herein under CPLR Article 9 and appointing Plaintiff as representative of the Class and Plaintiff's counsel as Lead Counsel for the Class;
- (b) An Award for the amount of the Plaintiff's and Class Members' unpaid wages, unpaid overtime, and pre- and post-judgment interest as allowed by law;
- (c) An award to Plaintiff and the Class Members of damages for each workday that Defendant failed to provide Plaintiff and the Class members with an accurate wage statement, or a total of \$5,000 for Plaintiff and for each Class Member, as provided by the NYLL;
- (d) An award of injunctive relief as the Court deems necessary and proper to

prevent against future violations of New York Labor Law;

- (e) An award to Plaintiff and the Class Members of reasonable attorneys' fees and costs pursuant to New York Labor Law; and
- (f) An award to Plaintiff and the Class Members of such further relief as this Court deems just and proper.

Dated: April 8, 2021  
Roslyn, New York

Respectfully submitted,

THE LAW FIRM OF  
LOUIS GINSBERG, P.C.

By: s/Louis Ginsberg  
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Attorneys for Plaintiff and the  
putative New York Class

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Haymarket Media Failed to Pay Hourly Employees for Off-the-Clock Work, Class Action Alleges](#)

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