

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**KYLE MODERNO, individually and on behalf of those
individuals similarly situated,**

Plaintiff,

– against –

**ALINES' AMERICAN, INC. d/b/a ALINES AUTO
GROUP and ANDY ALINE,**

Defendants.

COMPLAINT

Case No.:

Jury Trial Demanded

Plaintiff, KYLE MODERNO, (hereinafter “Plaintiff”), by and through his attorneys, ZABELL & ASSOCIATES, P.C., complains and alleges as follows:

INTRODUCTORY STATEMENT

1. Plaintiff brings this action on behalf of himself and all similarly situated employees and/or former employees seeking monetary damages, declaratory relief and affirmative relief based up on Defendants’ violations of the Fair Labor Standards Act (hereinafter “FLSA”), 29 U.S.C. §§ 201, *et seq.*, New York Labor Law (hereinafter “NYLL”), N.Y. Lab. Law § 650, *et seq.*; New York State Department of Labor Regulations (“NYDOL Regs”), N.Y.C.R.R. § 142-2.2, common law, and other appropriate rules, regulations, statutes and ordinances.
2. Plaintiff alleges, pursuant to the FLSA and NYLL, that he is entitled to recovery for himself, and on behalf of all similarly situated employees, from Defendants:
(1) an overtime premium for all hours worked in excess of forty (40) per week; (2) any and all relief due and owing to Plaintiff for Defendants’ failure to provide

proper meal periods; (3) interest on all compensation Defendants withheld; (4) an award of \$5,000.00 to Plaintiff; the maximum penalty for violation of NYLL § 195; (5) damages for retaliation to which Plaintiff was subjected by Defendants in response to his participation in statutorily protected activity; (6) liquidated damages; and, (7) attorneys' fees and costs.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1367.
4. This Court has jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.
5. Accordingly, this action properly lies in the United States District Court for the Eastern District of New York, pursuant to 28 U.S.C. § 1391.
6. This Court has the power to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

COLLECTIVE ACTION ALLEGATIONS

7. This action is properly maintainable as a collective action pursuant to 29 U.S.C. § 216(b).
8. This action is brought on behalf of Plaintiff and a class consisting of similarly situated employees all of whom now work or have worked for Defendants.
9. At all relevant times, Plaintiff and other FLSA and NYLL Collective Action Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, are and have been subject to Defendants'

decisions, policies, plans and common policies, programs, practices, procedures, protocols, routines and rules willfully failing and refusing to pay an overtime premium at a rate of not less than one and one-half (1.5) times their regular hourly rate for all hours worked in excess of forty (40) per week.

10. Upon information and belief, there are several current and former employees who are similarly situated to Plaintiff, all of whom have been underpaid in violation of the FLSA and NYLL. The named Plaintiff is representative of those other workers and acts on behalf of the interests of Defendants' current and former employees as well as his own by bringing this action.
11. Plaintiff seeks to proceed as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of himself and all similarly situated persons who work or have worked for Defendants at any time during the six (6) years prior to the filing of this action.
12. Plaintiff and potential Plaintiffs who were previously employed by Defendants for the past six (6) years prior to the filing of this action are each victims of Defendants' common policy and/or plan to violate the NYLL by failing to provide: overtime wages, at the rate of one and one-half (1.5) times the regular rate of pay, for all hours worked in excess of 40 hours in any given week pursuant to 29 U.S.C. § 207, NYLL § 650 *et seq.* and N.Y.C.R.R. § 142-2.2; and, wages notices as required under the Wage Theft Prevention Act, NYLL § 195.
13. The Collective Action Members are similarly situated to Collective Action Plaintiffs in that they were each employed by Defendants as "non-exempt" employees and were systematically denied premium overtime pay for hours

worked beyond forty (40) in each workweek.

14. The exact number of such individuals is presently unknown but is known by Defendants and can (and will) be ascertained in the course of discovery.

THE PARTIES

15. Plaintiff repeats and realleges each and every allegation contained herein.

16. Plaintiff, **KYLE MODERNO** resides in Suffolk County.

17. At all times relevant to the Complaint, Plaintiff was an “employee” within the meaning of § 3(e) of the FLSA, 29 U.S.C. § 203(e) and NYLL § 651(5).

18. At all times relevant to the Complaint, Plaintiff performed “activities for a business purpose” within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

19. Upon information and belief, Defendant **ALINES' AMERICAN, INC. d/b/a ALINES AUTO GROUP** (hereinafter “Defendant Alines Auto”) is a domestic corporation organized and existing under the laws of the State of New York, doing business in the County of Suffolk, in the State of New York at 412 Medford Avenue, Patchogue, New York 11722.

20. Defendant Alines Auto is a used car dealership which, in addition to sales, and provides personal financing options to consumers.

21. At all times relevant to the Complaint, Defendant Alines Auto was an “employer” within the meaning of § 3(d) of the FLSA, 29 U.S.C. § 203(d) and NYLL § 651(6).

22. Upon information and belief, at all times relevant to the Complaint, Defendant Alines Auto employed employees, including Plaintiff, who regularly were and are

engaged in commerce or in the production of goods for commerce or in handling, selling or otherwise working on goods and materials which have moved in or been produced for commerce within the meaning of 29 U.S.C. § 203(b), (g), (i) and (j).

23. Upon information and belief, Defendant **ANDY ALINE** (hereinafter “Defendant Aline”), was and is the Owner of Defendant Alines Auto and: (1) has the power to hire and fire employees; (2) supervises and controls employee work schedules and the work environment; (3) determines the rate and method of payment of employees; and (4) is charged with maintaining employment records for all the related entities.

24. At all times relevant to the Complaint, Defendant Aline was an “employer” within the meaning of § 203(b) of the FLSA and NYLL § 651(6).

25. Defendant Aline is and will remain individually liable to Plaintiff and Collective Action Plaintiffs for unpaid wages pursuant to New York Business Corporations Law § 630.

26. Upon information and belief, at all times relevant to the Complaint, each Defendant was an “enterprise” and performed activities for a business purpose within the meaning of 29 U.S.C. §§ 203(r)(1) and (r)(2), due to its operation of a used car dealership.

27. Upon information and belief, at all times relevant to the Complaint, the Defendant, Alines Auto, employed more than two (2) employees engaged in interstate commerce and had a gross annual dollar volume of sales made or business done of not less than \$500,000.00 (exclusive of excise taxes at the retail

level that are separately stated) due to their operation as a used automobile distributor.

FACTS

28. Plaintiff repeats and realleges each and every allegation contained herein.

29. Plaintiff worked for Defendants on a full-time basis from in or around April 2018 to May 2018.

30. At all times relevant to the Complaint, Plaintiff was employed as a “parking attendant”.

31. Plaintiff has no formal training as a “parking attendant” and his duties as a “parking attendant” required no advanced knowledge, skill and/or expertise.

32. At all times relevant to the Complaint, Plaintiff performed the essential functions of his position in a satisfactory manner and satisfied all conditions precedent to payment in accordance with the established terms and conditions of his employment.

33. Plaintiff was a “non-exempt” employee who was eligible for overtime premiums for all hours worked in excess of forty (40) per week.

34. At all times relevant to the Complaint, Plaintiff worked every Monday, Tuesday, Wednesday, Thursday, Friday from 8:00 a.m. until 6:00 p.m. and every Saturday from 8:00 a.m. until 1:00 p.m.

35. Accordingly, Plaintiff regularly worked no fewer than fifty-five (55) hours per week.

36. At all times relevant to the Complaint, Plaintiff was paid at a rate of \$12.00 per hour for all hours worked, including those hours worked over forty (40) per week.
37. Defendants failed to compensate Plaintiff for all time worked in excess of forty (40) hours per week at a rate of at least one and one-half (1½) times his regular hourly rate. Attached hereto as **Exhibit "1"** is a true and accurate copy of Plaintiff's pay stub for the May 5, 2018 through May 10, 2018 pay period.
38. Upon discovering that Defendants did not compensate him at the statutory overtime rate, Plaintiff made an inquiry and complained to Defendant Aline as to why he did not receive overtime compensation.
39. In response, Defendant Aline told Plaintiff in sum and substance that he did not pay his employees overtime.
40. Immediately thereafter, in May 2018, Plaintiff was terminated by Defendant Aline as a proximate result of and in response to his complaint.
41. Plaintiff, upon information and belief, and other similarly situated individuals worked six (6) days a week at no less than fifty-five (55) hours per week and did not receive overtime compensation for the hours worked in excess of forty (40) hours per week at the applicable statutory rate of one and one-half (1½) times the regular rate of pay in violation of the NYLL.
42. Defendants failed to post notices explaining wage and hour requirements in conspicuous locations as required by the NYLL, N.Y.C.R.R. 12 § 137-2.3.

43. During Plaintiff's tenure, Defendants also failed to provide him with written notice of his wage rate, in accordance with the New York State Wage Theft Prevention Act, NYLL § 195.

44. Defendants did not regularly provide Plaintiff with meal breaks in violation of NYLL §§ 162(2) & (3).

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
(Failure to Pay Overtime – FLSA Violation)

45. Plaintiff repeats and realleges each and every allegation contained herein.

46. Each Defendant is an employer under 29 U.S.C. § 203(d).

47. Plaintiff is an employee under 29 U.S.C. § 203(e).

48. Pursuant to 29 U.S.C. § 207, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty (40) hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

49. Plaintiff worked in excess of forty (40) hours per week, every week of his employment with Defendants.

50. Plaintiff did not receive overtime compensation at the rate of one and one-half (1.5) times his regular rate of pay for all hours worked in excess of forty (40) hours in any given week.

51. Consequently, by failing to pay overtime compensation, Defendants violated the governing provisions of the FLSA.

52. Defendants' failure to pay overtime compensation was willful.

53. By the foregoing reasons, Defendants are liable to Plaintiff in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

SECOND CLAIM FOR RELIEF
(Failure to Pay Overtime – NYLL Violation)

54. Plaintiff repeats and realleges each and every allegation contained herein.

55. Each Defendant is an employer under NYLL Article 19 § 651(6) and the supporting NYDOL Regs.

56. 12 NYCRR §142-2.2 requires that “[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s regular rate.”

57. Plaintiff worked in excess of forty (40) hours per week, every week of his employment with Defendants.

58. Plaintiff did not receive overtime compensation at a rate of one and one-half (1.5) times their regular rate of pay for all hours worked in excess of forty (40) hours in any given week.

59. Consequently, by failing to pay to overtime compensation, Defendants violated 12 NYCRR § 142-2.2.

60. For the foregoing reasons, Defendants violated 12 NYCRR § 142-2.2 and is liable to Plaintiff in an amount to be determined at trial plus liquidated damages, interest, attorneys' fees, and costs.

THIRD CLAIM FOR RELIEF
(New York Wage Theft Prevention Act Violation)

61. Plaintiff repeats and realleges each and every allegation contained herein.

62. The New York Wage Theft Prevention Act requires employers, upon hire, to “notify his or her employees, in writing, at the time of hiring of the rate of pay and of the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article and obtain a written acknowledgement from each employee of receipt of this notice. Such acknowledgement shall conform to any requirements established by the commissioner with regard to content and form. For all employees who are eligible for overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law or regulation, the notice must state the regular hourly rate and overtime rate of pay.”

63. Defendants did not provide Plaintiff, and, upon information and belief, those individuals similarly situated, with a wage notice, as required by NYLL § 195.

64. Plaintiff, and, upon information and belief, those individuals similarly situated, did not sign an acknowledgment confirming receipt of said notice, as required by NYLL § 195.

65. For the foregoing reasons, Defendants have violated NYLL § 195 and are liable to Plaintiff, and those individuals similarly situated, in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

FOURTH CLAIM FOR RELIEF
(Failure to Provide Proper Meal Periods – NYLL Violation)

66. Plaintiff repeats and realleges each and every allegation contained herein.

67. Plaintiff, and, upon information and belief, those individuals similarly situated, were employed in connection with Defendants' used car dealership.

68. Plaintiff, and, upon information and belief, those individuals similarly situated, worked shifts of more than six (6) hours that extended over the noon day meal period. Additionally, Plaintiff, and, upon information and belief, those individuals similarly situated, began work: every Monday, Tuesday, Wednesday, Thursday, Friday at 8:00 a.m. and worked through 6:00 p.m.; and, every Saturday from 8:00 a.m. until 1:00 p.m.

69. However, Defendants failed to provide Plaintiff, and, upon information and belief, those individuals similarly situated with any meal periods, in violation of NYLL §§ 162(2) & (3).

70. Upon information and belief, the New York Commissioner of Labor did not issue authority to Defendants to provide shorter meal periods, or no meal periods at all, to Plaintiff pursuant to NYLL § 162(5).

71. By the foregoing reasons, Defendants have violated 12 NYCRR § 142-2.4 and are liable to Plaintiff, and those individuals similarly situated, in an amount to be determined at trial, plus interest, attorneys' fees and costs.

FIFTH CLAIM FOR RELIEF
(Retaliation – NYLL Violation)

72. Plaintiff repeats and realleges each and every allegation contained herein.

73. Plaintiff was retaliated against by Defendants in response to his lawful complaints to Defendant Aline regarding the wage and hour violations to which he was subjected to.

74. As a proximate result of Defendants' retaliation, Plaintiff has suffered and continues to suffer substantial loss of future earnings, bonuses, other employment benefits, all to Plaintiff's damage in an amount to be determined at trial.

75. As a further proximate result of Defendants' retaliation, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and consequential damages. Therefore, Plaintiff is entitled to equitable and injunctive relief, attorneys' fees, and an award of compensatory damages in an amount to be determined at trial.

WHEREFORE, as a result of the unlawful conduct and actions of Defendants herein alleged, Plaintiff and those individuals similarly situated, respectfully request this Court grant the following relief:

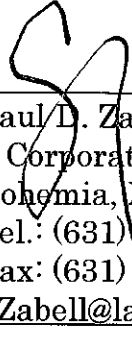
- a) On the First and Fourth Claims for Relief, an award of Plaintiff's actual damages in an amount to be determined at trial plus interest;
- b) On the Second and Third Claims for Relief, an award up to the maximum penalty for violations NYLL § 195;
- c) Order Defendants pay Plaintiff a reasonable sum for expenses pursuant to the NYLL §§ 198 and 12 NYCRR §142-2.2;
- d) Declare Defendants violated the NYLL;
- e) Enjoin Defendants from further acts in violation of the NYLL;
- f) An award of liquidated damages where allowed by statute;
- g) Defendants be ordered to pay Plaintiff pre and post judgment interest where allowed by statute;

- h) Defendant to pay all costs and disbursements of this action, including Plaintiff's attorneys' fees; and
- i) Order such other and further relief as may be just and proper.

Dated: Bohemia, New York
June 19, 2018

ZABELL & ASSOCIATES, P.C
Attorneys for Plaintiff

By: _____


Saul D. Zabell, Esq.
1 Corporate Drive, Suite 103
Bohemia, New York 11716
Tel.: (631) 589-7242
Fax: (631) 563-7475
SZabell@laborlawsny.com

01233
 Company Code **RX / BY6 21057541** Loc/Dept **01/6143** Number **11162** Page **1 of 1**
ALINES AMERICAN INC
412 MEDFORD AVE
PATCHOUGE, NY 11772

Earnings Statement



Period Starting: 05/04/2018
 Period Ending: 05/10/2018
 Pay Date: 05/11/2018

Business Phone: 631-654-5660

Taxable Marital Status: Single
 Exemptions/Allowances: Tax Override:
 Federal: 0 Federal:
 State: 0 State:
 Local: 0 Local:
 Social Security Number: XXX-XX-XXXX

KYLE A MODERNO
7 OSAGE LANE
NESCONSET, NY 11767

Earnings	rate	hours/units	this period	year to date
Regular	12.0000	50.00	600.00	1416.00
Gross Pay			\$600.00	\$1,416.00

Other Benefits and Information	this period	year to date
Total Hours Worked	50.00	118.00

Statutory Deductions	this period	year to date
Federal Income	-59.80	133.32
Social Security	-37.20	87.79
Medicare	-8.70	20.53
New York State Income	-22.96	46.72
New York Paid Family Leave	-0.76	1.79
Voluntary Deductions	this period	year to date
New York voluntary disability	-0.60	1.80
Net Pay	\$469.98	

Important Notes
 NOT GOOD AFTER 90 DAYS

Your federal taxable wages this period are: \$600.00

JS 44 (Rev. 1/2013)

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
 KYLE MODERNO individually and on behalf of all other individuals similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Saul D. Zabell, Zabell & Associates, P.C.
 1 Corporate Drive, Suite 103, Bohemia, New York 11716,
 (631) 589-7242

DEFENDANTS
 ALINES' AMERICAN, INC. d/b/a ALINES AUTO GROUP and ANDY ALINE

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)
 Unknown

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

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input 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 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)

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

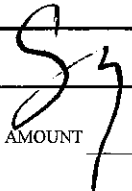
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. Section 201, et seq.

Brief description of cause:
Violations of the Fair Labor Standards Act of 1938

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ TBD CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/19/2018 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Saul D. Zabell, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

Not applicable

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____


(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.
 Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?
 Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KYLE MODERNO, individually and on behalf of those individuals similarly situated,

Plaintiff(s)

v.

ALINES' AMERICAN, INC. d/b/a ALINES AUTO GROUP and ANDY ALINE,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ALINES' AMERICAN, INC. d/b/a ALINES AUTO GROUP
412 Medford Avenue
Patchogue, New York 11722

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Saul D. Zabell, Esq. Zabell & Associates, P.C. One Corporate Drive Bohemia, New York 11716

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KYLE MODERNO, individually and on behalf of those individuals similarly situated,

Plaintiff(s)

v.

ALINES' AMERICAN, INC. d/b/a ALINES AUTO GROUP and ANDY ALINE,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ANDY ALINE
412 Medford Avenue
Patchogue, New York 11722

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Saul D. Zabell, Esq. Zabell & Associates, P.C. One Corporate Drive Bohemia, New York 11716

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alines Auto Group Hit with Unpaid Overtime Collective Action](#)
