

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

**SAMUEL & STEIN**

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Attorneys for Plaintiffs, Individually  
and on behalf of all others similarly  
situated

Marlon Patricio Montalvan  
Cabrera and Emmanuel Esteban  
Guillen, on behalf of  
themselves and all other  
persons similarly situated,

Plaintiffs,

- vs. -

New Somahang Auto & Body Inc.  
and Chan Soo Kim,

Defendants.

DOCKET NO. 18-cv-801

**COMPLAINT**

Plaintiffs Marlon Patricio Montalvan Cabrera and Emmanuel Esteban Guillen, by and through their undersigned attorneys, for their complaint against defendants New Somahang Auto & Body Inc. and Chan Soo Kim, allege as follows, on behalf of themselves and on behalf of all other persons similarly situated:

**NATURE OF THE ACTION**

1. Plaintiffs Marlon Patricio Montalvan Cabrera and Emmanuel Esteban Guillen allege on behalf of themselves and on behalf of other similarly situated current and former employees of defendants New Somahang Auto & Body Inc. and Chan Soo Kim, who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), that they are entitled to: (i) unpaid wages from defendants for overtime work for which they did not receive overtime premium pay as required by law, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 et seq., because defendants' violations lacked a good faith basis.

2. Mr. Montalvan Cabrera and Mr. Guillen further complain that they are entitled to (i) back wages for overtime work for which defendants willfully failed to pay overtime premium pay as required by the New York Labor Law §§ 650 et seq. and the supporting New York State Department of Labor regulations; (ii) liquidated damages pursuant to New York Labor Law for these violations; and (iii) compensation for defendants' violation of the Wage Theft Prevention Act.

**THE PARTIES**

3. Plaintiffs Mr. Montalvan Cabrera and Mr. Guillen are adult individuals residing in Queens, New York.

4. Mr. Montalvan Cabrera and Mr. Guillen consent in writing to be parties to this action pursuant to 29 U.S.C. § 216(b); their written consents are attached hereto and incorporated by reference.

5. Upon information and belief, defendant New Somahang Auto & Body Inc. ("New Somahang") is a New York corporation with a principal place of business at 31-25 College Point Boulevard, Flushing, New York.

6. At relevant times, defendant New Somahang has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 207(a).

7. Upon information and belief, at all relevant times, defendant New Somahang has had gross annual revenues in excess of \$500,000.00.

8. Upon information and belief, at all relevant times herein, defendant New Somahang has used goods and materials produced in interstate commerce, and has employed at least two individuals who handled such goods and materials.

9. Upon information and belief, defendant Chan Soo Kim is an owner or part owner and principal of defendant

New Somahang, who has the power to hire and fire employees, set wages and schedules, and maintain their records.

10. Defendant Chan Soo Kim was involved in the day-to-day operations of defendant New Somahang, and played an active role in managing the business.

11. For example, defendant Chan Soo Kim personally hired Mr. Montalvan Cabrera and Mr. Guillen and set their schedules and pay.

12. Defendants constituted "employers" of Mr. Montalvan Cabrera and Mr. Guillen as that term is used in the Fair Labor Standards Act and New York Labor Law.

#### **JURISDICTION AND VENUE**

13. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendants' business is located in this district.

#### **COLLECTIVE ACTION ALLEGATIONS**

15. Pursuant to 29 U.S.C. § 207, Mr. Montalvan Cabrera and Mr. Guillen seek to prosecute their FLSA claims

as a collective action on behalf of a collective group of persons defined as follows:

All persons who are or were formerly employed by defendants in the United States at any time since February 1, 2015, to the entry of judgment in this case (the "Collective Action Period"), who were non-exempt employees within the meaning of the FLSA, and who were not paid overtime compensation at rates at least one-and-one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the "Collective Action Members").

16. The Collective Action Members are similarly situated to Mr. Montalvan Cabrera and Mr. Guillen in that they were employed by defendants as non-exempt laborers, and were denied premium overtime pay for hours worked beyond forty hours in a week.

17. They are further similarly situated in that defendants had a policy and practice of knowingly and willfully refusing to pay them overtime.

18. Mr. Montalvan Cabrera, Mr. Guillen, and the Collective Action Members perform or performed the same primary duties, and were subjected to the same policies and practices by defendants.

19. The exact number of such individuals is presently unknown, but is known by defendants and can be ascertained through appropriate discovery.

**FACTS**

20. At all relevant times herein, defendants owned and operated an auto body shop in Queens.

21. Mr. Montalvan Cabrera was employed by defendants from approximately December 2011 through January 2018.

22. Mr. Guillen was employed by defendants from approximately December 2016 through December 2017.

23. Mr. Montalvan Cabrera and Mr. Guillen were employed as auto body workers, whose job was to paint cars and fix auto bodies.

24. Plaintiffs' work was performed in the normal course of defendants' business and was integrated into the business of defendants, and did not involve executive or administrative responsibilities.

25. At all relevant times herein, plaintiffs were employees engaged in commerce and/or in the production of goods for commerce, as defined in the FLSA and its implementing regulations.

26. Plaintiffs' regular schedule was 10 hours per day, Monday through Friday. However, defendants sometimes required plaintiffs to work six hours on Saturdays, as well; Mr. Montalvan Cabrera rarely did so, but Mr. Guillen did so several times per month.

27. As a result, Mr. Montalvan Cabrera routinely worked 50 hours per week, and occasionally more, while Mr. Guillen worked between 50 and 56 hours per week.

28. Until 2018, defendants did not provide a time clock, sign in sheet, or any other method for employees to track their time worked. In 2018, defendants implemented a time clock for employees to use to punch in and out.

29. Nevertheless, both before and after the time clock was put in place, plaintiffs were paid weekly on a salary basis.

30. Mr. Montalvan Cabrera started at \$750 per week and received roughly annual raises of \$25 per week, until he was making \$950 per week at the time his employment ended.

31. Mr. Guillen received \$600 per week throughout his employment,

32. These amounts did not vary based on plaintiffs' hours worked, regardless of the number of hours they worked in a week. Indeed, even if they worked Saturdays, they were still not paid anything beyond their base salaries.

33. Mr. Montalvan Cabrera and Mr. Guillen were each paid in cash throughout their employment, with the exception of two or three instances when they were paid by

business checks, and they received no paystubs or wage statements with their pay.

34. Defendants failed to pay Mr. Montalvan Cabrera or Mr. Guillen an overtime "bonus" for hours worked beyond 40 hours in a workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

35. Defendants' failure to pay Mr. Montalvan Cabrera or Mr. Guillen the proper overtime bonus for overtime hours worked was willful, and lacked a good faith basis.

36. Defendants failed to provide Mr. Montalvan Cabrera or Mr. Guillen with written notices providing the information required by the Wage Theft Prevention Act - including, *inter alia*, defendants' contact information, their regular and overtime rates, and intended allowances claimed - and failed to obtain their signatures acknowledging the same, upon their hiring or at any time thereafter, in violation of the Wage Theft Prevention Act in effect at the time.

37. Defendants failed to provide Mr. Montalvan Cabrera or Mr. Guillen with weekly records of their compensation and hours worked, in violation of the Wage Theft Prevention Act.



38. Upon information and belief, throughout the period of plaintiffs' employment, both before that time (throughout the Collective Action Period) and continuing until today, defendants have likewise employed other individuals like Mr. Montalvan Cabrera and Mr. Guillen (the Collective Action Members) in positions at defendants' auto body shop that required little skill, no capital investment, and with duties and responsibilities that did not include any managerial responsibilities or the exercise of independent judgment.

39. Defendants applied the same employment policies, practices, and procedures to all Collective Action Members, including policies, practices, and procedures with respect to the payment of overtime.

40. Upon information and belief, these other individuals have worked in excess of forty hours per week, yet defendants have likewise failed to pay them overtime compensation of one-and-one-half times their regular hourly rate in violation of the FLSA and the New York Labor Law.

41. Upon information and belief, these other individuals were not provided with required wage notices or weekly wage statements as specified in New York Labor Law §§ 195.1, 195.3, and the Wage Theft Prevention Act.

42. Upon information and belief, while defendants employed Mr. Montalvan Cabrera, Mr. Guillen, and the Collective Action members, and through all relevant time periods, defendants failed to maintain accurate and sufficient time records or provide accurate records to employees.

43. Upon information and belief, while defendants employed Mr. Montalvan Cabrera, Mr. Guillen, and the Collective Action members, and through all relevant time periods, defendants failed to post or keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA or New York Labor Law.

**COUNT I**

**(Fair Labor Standards Act - Overtime)**

44. Mr. Montalvan Cabrera and Mr. Guillen, on behalf of themselves and all Collective Action Members, repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

45. At all relevant times, defendants employed Mr. Montalvan Cabrera, Mr. Guillen, and each of the Collective Action Members within the meaning of the FLSA.

46. At all relevant times, defendants had a policy and practice of refusing to pay proper overtime

compensation to their employees for hours they worked in excess of forty hours per workweek.

47. As a result of defendants' willful failure to compensate their employees, including Mr. Montalvan Cabrera, Mr. Guillen, and the Collective Action Members, at a rate at least one-and-one-half times their regular rates of pay for work performed in excess of forty hours per workweek, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).

48. The foregoing conduct, as alleged, constituted a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), and lacked a good faith basis within the meaning of 29 U.S.C. § 260.

49. Due to defendants' FLSA violations, Mr. Montalvan Cabrera, Mr. Guillen, and the Collective Action Members are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Overtime)

50. Mr. Montalvan Cabrera and Mr. Guillen repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

51. At all relevant times, Mr. Montalvan Cabrera and Mr. Guillen were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

52. Defendants willfully violated the rights of Mr. Montalvan Cabrera and Mr. Guillen by failing to pay them overtime compensation at rates at least one-and-one-half times their regular rates of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 et seq. and its supporting regulations in 12 N.Y.C.R.R. § 142.

53. Defendants' failure to pay overtime was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

54. Due to defendants' New York Labor Law violations, Mr. Montalvan Cabrera and Mr. Guillen are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

**COUNT III**

**(New York Labor Law - Wage Theft Prevention Act)**

55. Mr. Montalvan Cabrera and Mr. Guillen repeat, reallege, and incorporate by reference the foregoing allegations as if set forth fully and again herein.

56. At all relevant times, Mr. Montalvan Cabrera and Mr. Guillen were employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

57. Defendants willfully violated the rights of Mr. Montalvan Cabrera and Mr. Guillen by failing to provide them with the wage notices required by the Wage Theft Prevention Act when they were hired, or at any time thereafter.

58. Defendants willfully violated the rights of Mr. Montalvan Cabrera and Mr. Guillen by failing to provide them with weekly wage statements required by the Wage Theft Prevention Act at any time during their employment.

59. Due to defendants' New York Labor Law violations relating to the failure to provide wage statements, Mr. Montalvan Cabrera and Mr. Guillen are entitled to recover from the defendants statutory damages of \$100 per week through February 26, 2015, and \$250 per day from February 27, 2015 through the end of their employment, up to the maximum statutory damages.

60. Due to defendants' New York Labor Law violations relating to the failure to provide wage notices, Mr. Montalvan Cabrera and Mr. Guillen are entitled to recover from the defendants statutory damages of \$50 per week through February 26, 2015, and \$50 per day from February 27, 2015 to the termination of their employment, up to the maximum statutory damages.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Montalvan Cabrera and Mr. Guillen respectfully request that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and appointing Mr. Montalvan Cabrera, Mr. Guillen, and their counsel to represent the Collective Action members;

- b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;
- c. An injunction against defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- d. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;
- e. An award of liquidated damages as a result of defendants' willful failure to pay statutory overtime compensation pursuant to 29 U.S.C. § 216;
- f. Liquidated damages for defendants' New York Labor Law violations;
- g. Statutory damages for defendants' violation of the New York Wage Theft Prevention Act;
- h. Back pay;
- i. Punitive damages;

- j. An award of prejudgment and postjudgment interest;
- k. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- l. Such other, further, and different relief as this Court deems just and proper.

Dated: February 1, 2018



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David Stein  
SAMUEL & STEIN  
38 West 32<sup>nd</sup> Street  
Suite 1110  
New York, New York 10001  
(212) 563-9884  
Attorneys for Plaintiffs



# **EXHIBIT A**

CONSENT TO SUE

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of New Somahang Auto & Body Inc. and its owners and affiliates to pay me, *inter alia*, minimum wage and overtime wages as required under state and/or federal law and also authorize the filing of this consent in the lawsuit challenging such conduct, and consent to being named as a representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning all aspects of this lawsuit. I have been provided with a copy of a retainer agreement with the law firm of Samuel & Stein, and I agree to be bound by its terms.

Con mi firma abajo, autorizo la presentación y tramitación de reclamaciones en mi nombre y de mi parte para impugnar el fallo de New Somahang Auto & Body Inc. y sus propietarios y afiliados a me pagan, entre otras cosas, el salario mínimo y pago de horas extras, requerida en el estado y / o la ley federal y también autorizan la presentación de este consentimiento en la demanda contra ese tipo de conducta, y el consentimiento para ser nombrado como demandante representante en esta acción para tomar decisiones en nombre de todos los demás demandantes en relación con todos aspectos de esta demanda. Se me ha proporcionado una copia de un acuerdo de retención con la firma de abogados de Samuel y Stein, y estoy de acuerdo en estar obligado por sus términos.

A handwritten signature in blue ink that reads "Marlon Patricio Montalvan Cabrera". The signature is written in a cursive style and includes a small flourish at the end.

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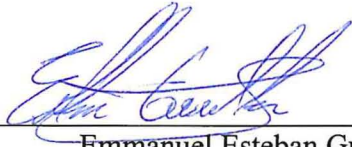
Marlon Patricio Montalvan Cabrera

Date: January 31, 2018

**CONSENT TO SUE**

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of New Somahang Auto & Body Inc. and its owners and affiliates to pay me, *inter alia*, minimum wage and overtime wages as required under state and/or federal law and also authorize the filing of this consent in the lawsuit challenging such conduct, and consent to being named as a representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning all aspects of this lawsuit. I have been provided with a copy of a retainer agreement with the law firm of Samuel & Stein, and I agree to be bound by its terms.

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Emmanuel Esteban Guillen

Date: January 31, 2018

JS 44 (Rev. 01/29/2018)

### 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**

Marlon Patricio Montalvan Cabrera and Emmanuel Esteban Guillen, on behalf of themselves and all other persons similarly situated

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

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

Samuel & Stein / 38 West 32nd Street, Suite 1110 / New York, NY 10001 / (212) 563-9884

**DEFENDANTS**

New Somahang Auto & Body Inc. and Chan Soo Kim

County of Residence of First Listed Defendant Queens County, NY  
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

**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)

Click here for: Nature of Suit Code Descriptions.

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	<b>PERSONAL INJURY</b> <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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <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  <b>IMMIGRATION</b> <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  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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	FEDERAL TAX SUITS	
<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	<b>Habeas Corpus:</b> <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  <b>Other:</b> <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	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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):

29 U.S.C. § 201, et seq.

Brief description of cause:  
Failure to pay overtime

**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

DOCKET NUMBER

DATE

02/01/2018

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD



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, David Stein, counsel for plaintiffs, 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:

None

**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?  Yes  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?  Yes  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  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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?  Yes  No

(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: David Stein

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Marlon Patricio Montalvan Cabrera and Emmanuel Esteban Guillen, on behalf of themselves and all other persons similarly situated

Plaintiff(s)

v.

New Somahang Auto & Body Inc. and Chan Soo Kim

Defendant(s)

Civil Action No. 18-cv-801

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

New Somahang Auto & Body Inc.
31-25 College Point Boulevard
Flushing, New York 11354

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:

David Stein, Esq.
Samuel & Stein
38 West 32nd Street, Suite 1110
New York, NY 10001

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. 18-cv-801

**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 \_\_\_\_\_ .

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:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Marlon Patricio Montalvan Cabrera and Emmanuel Esteban Guillen, on behalf of themselves and all other persons similarly situated

Plaintiff(s)

v.

New Somahang Auto & Body Inc. and Chan Soo Kim

Defendant(s)

Civil Action No. 18-cv-801

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Chan Soo Kim
% New Somahang Auto & Body Inc.
31-25 College Point Boulevard
Flushing, New York 11354

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:

David Stein, Esq.
Samuel & Stein
38 West 32nd Street, Suite 1110
New York, NY 10001

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. 18-cv-801

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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:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [New Somahang Auto & Body Inc. Subject of Unpaid Overtime Collective Action](#)

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