UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JEFFREY MCEARCHEN, DANIEL LAWSON, and THOMAS C. WOLFE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

URBAN OUTFITTERS, INC.,

Defendant.

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Case No.: 13-cv-3569-FB-JO

AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, JEFFREY MCEARCHEN, DANIEL LAWSON, and THOMAS WOLFE (collectively "Plaintiffs"), individually and on behalf of all other persons similarly situated, by their attorneys, upon personal knowledge as to themselves, and upon information and belief as to other matters, allege as follows:

1. This action is brought on behalf of Department Managers ("DMs" herein), and individuals holding comparable salaried positions with different titles employed by Urban Outfitters, Inc. ("Urban Outfitters" or "Defendant" herein) within the United States.

2. Urban Outfitters is a retail store chain selling clothing and household goods, generally aimed at young adults. As alleged herein, Urban Outfitters has misclassified Plaintiffs and other similarly situated employees as exempt under federal and New York State overtime laws and failed to pay them for all hours worked by them as well as overtime pay for hours worked above 40 in a workweek.

NATURE OF THE ACTION

3. Plaintiffs allege on behalf of themselves and other current and former DMs, as defined herein, employed by Defendant within the United States, who elect to opt into this action

pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b) (the "Collective Action"), that they are: (i) entitled to unpaid wages from Defendant for all hours worked by them as well as for overtime work for which they did not receive overtime premium pay, as required by law, and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.*

4. Plaintiffs Daniel Lawson and Jeffrey McEarchen, pursuant to Fed. R. Civ. P. 23, further allege on behalf of themselves and other current and former Department Managers and similarly situated current and former employees holding comparable positions but different titles, employed by Defendant in the State of New York (hereinafter the "Class") that they are: (i) entitled to unpaid overtime wages for hours worked above 40 in a workweek, as required by the New York Labor Law ("NYLL") §§ 650 et seq. and the supporting New York State Department of Labor Regulations and (ii) Defendant's willful failure to comply with the notice and record keeping requirements of NYLL §§ 195(1) and 195(3) resulting in penalties under NYLL §§ 198(1)(b) and 198(1)(d) .

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

6. In addition, the Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331.

7. At least one member of the proposed Collective and Class Action is a citizen of a state different from that of the Defendant.

8. Plaintiffs' claims involve matters of national or interstate interest.

9. Defendant is subject to personal jurisdiction in New York and within this District.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391 inasmuch as a substantial part of the events or omissions giving rise to the claims occurred in this District and two of the Plaintiffs reside in this District.

11. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

12. Plaintiff, JEFFREY MCEARCHEN ("McEarchen"), is an adult individual residing in Brooklyn, New York.

13. Defendant employed McEarchen as a DM from approximately August 1, 2009 until March 23, 2013 at Defendant's stores located in Brooklyn, New York and New York, New York.

14. Plaintiff, DANIEL LAWSON ("Lawson"), is an adult residing in Brooklyn, New York.

15. Defendant employed Lawson as a DM from approximately March 1, 2005 until October 1, 2011 at one of Defendant's stores located in New York, New York.

16. Plaintiff, THOMAS C. WOLFE ("Wolfe"), is an adult individual residing in Birmingham, Alabama.

17. Defendant employed Wolfe as a DM from approximately September 2007 until April 2011 at Defendant's stores located in Birmingham, Alabama and Nashville, Tennessee.

18. Plaintiffs worked in excess of 40 hours per workweek, without receiving wages from Defendant for all hours worked, as well as overtime compensation as required by federal and New York State laws.

19. Defendant is a Pennsylvania corporation, with its principal executive offices located at 5000 South Broad Street, Philadelphia, Pennsylvania. According to Defendant's Form 10-K for the fiscal year ending January 31, 2013, the company operates 167 retail stores in the United States in which it sells "women's and men's fashion apparel, footwear and accessories, as well as an eclectic mix of apartment wares and gifts." Form 10-K at 2, 19. Defendant maintains control, oversight, and discretion over the operation of its retail stores, including their employment practices.

COLLECTIVE ACTION ALLEGATIONS

20. Pursuant to 29 U.S.C. § 216(b), Plaintiffs seek to prosecute their FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendant in the United States at any time since June 24, 2010 to the entry of judgment in this case (the "Collective Action Period") as DMs and individuals holding comparable salaried positions with different titles employed by Defendant within the United States (the "Collective Action Members").

21. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other DMs.

22. There are many similarly situated current and former Urban Outfitter DMs who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. Thus, Notice should be sent to the FLSA Collective Action Members pursuant to 29 U.S.C. § 216(b).

23. The similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records.

CLASS ACTION ALLEGATIONS

24. Plaintiffs Lawson and McEarchen also bring a NYLL class claim on behalf of themselves and a class of persons under Fed. R. Civ. P. 23, consisting of all persons in the Class, as defined in Paragraph 4, above, who work or have worked for Defendant from June 24, 2007, to the date of the judgment in this action.

25. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although Plaintiffs do not know the precise number of such persons, the facts on which the calculation of that number can be based are presently within the sole control of the Defendant and are ascertainable.

26. Defendant has acted or 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.

27. There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

a. whether Defendant has failed and/or refused to pay Plaintiffs and the Class overtime pay for the hours worked in excess of 40 hours per workweek within the meaning of NYLL Article 19, §§ 650 *et seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142;

b. whether Defendant willfully failed to comply with the notice and record keeping requirements of NYLL §§195(1) and 195(3), resulting in penalties under NYLL §§ 198(1)b and 198(1)d;

c. the nature and extent of the class-wide injury and the appropriate measure of damages for the Class;

d. whether Defendant has a policy of misclassifying Department Managers as exempt from coverage of the overtime provisions of the NYLL;

e. whether Defendant's policy of misclassifying Department Managers was done willfully;

f. whether Defendant can prove that its unlawful policies were implemented in good faith.

28. Plaintiffs' claims are typical of the claims of the Class they seek to represent. Plaintiffs and the Class work or have worked for Defendant as Department Managers in their retail stores and have not been paid overtime wages for the hours they have worked in excess of 40 per week. By misclassifying Department Managers as exempt from the NYLL overtime protections, Defendant has acted and refused to act on grounds generally applicable to the Class.

29. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

30. Plaintiffs have retained counsel competent and experienced in complex class actions and in wage and hour litigation.

31. A class action is superior to other available methods for the fair and efficient adjudication of this wage and hour litigation, where individual plaintiffs may lack the financial resources to prosecute vigorously a lawsuit in federal court against a corporate defendant.

32. Plaintiffs and the members of the Class have been damaged and are entitled to recovery because of Defendant's common and uniform policies, practices and procedures. Although the relative damages suffered by individual Class Members are not *de minimus*, such damages are small compared to the expense and burden of bringing individual cases.

33. Class treatment is superior because it will obviate the need for duplicative litigation that may result in inconsistent judgments about Defendant's practices.

STATEMENT OF FACTS

34. Defendant employed Plaintiffs, the Collective Action Members, and the Class Members as DMs.

35. Defendant maintains control, oversight, and discretion over the operation of its retail stores, including their employment practices with respect to Plaintiffs, the Collective Action Members, and the Class Members.

36. Plaintiffs', the Collective Action Members', and the Class Members' work as DMs was performed in the normal course of Defendant's business and was integrated into it.

37. Consistent with Defendant's policy, pattern, and/or practice, Plaintiffs, the Collective Action Members, and the Class Members regularly worked in excess of 40 hours per workweek without being paid overtime wages, in violation of the FLSA and NYLL.

38. Defendant scheduled Plaintiff Lawson to work 40 hours per week, but Lawson actually worked 50 hours per week during each week in which he worked five or more shifts, and was not paid for the hours worked in excess of 40.

39. Defendant scheduled Plaintiff McEarchen to work 40 hours per work, but McEarchen actually worked 47 to 50 hours per week during each week in which he worked five or more shifts, and was not paid for the hours worked in excess of 40.

40. Defendant scheduled Plaintiff Wolfe to work 40 hours per week, but Wolfe actually worked 50 to 60 during each week in which he worked five or more shifts, and was not paid for the hours worked in excess of 40.

41. The number of shifts each Plaintiff worked per week can be ascertained from Defendant's records.

42. Defendant assigned all of the work that Plaintiffs, the Collective Action Members, and the Class Members performed, and/or has been aware of it.

43. This work required little skill and no capital investment. Nor did it include managerial responsibilities, or the exercise of meaningful independent judgment and discretion. Indeed, in Defendant's most recent Form 10-K filed with the Securities and Exchange Commission, where the company describes the organization of its stores, it all-but admits that its stores are run by their store managers, and the DM position is treated as subordinate:

> We have organized our retail store operations by brand into geographic areas or districts that each have a district manager. District managers are responsible for several stores and monitor and supervise individual store managers. Each store manager is responsible for overseeing the daily operations of one of our stores. In addition to a store manager, the staff of a typical Urban Outfitters, Anthropologie, Free People, Terrain and BHLDN store includes a combination of some or all of the following positions: a visual manager, several department managers and full and part-time sales and visual staff.

Urban Outfitters, Inc., Form 10-K for the fiscal year ending January 31, 2013 at 7.

44. Throughout the Collective Action and Class Period, Plaintiffs, the Collective Action Members, and the Class Members performed the same primary job duties including, but not limited to:

a. Taking out the garbage;

b. Cleaning the store;

c. Stocking displays, tables, racks, and shelves;

d. Folding clothes;

e. Building displays and planograms;

f. Unloading freight;

g. Unpacking boxes and merchandise;

h. Operating the cash registers;

i. Processing shipments, returns and exchanges, and store-to-store transfers;

j. Putting merchandise onto the sales floor;

k. Running "go-backs" from the fitting room to the sales floor;

l. Stacking and neatening displays, tables, racks, and shelves;

m. Recovering merchandise;

n. Organizing the stock room and counting inventory;

o. Filling customers' orders and checking for stock; and

p. Providing customer service.

45. Throughout the Collective Action and Class Period, Plaintiffs', the Collective Action, and the Class members' primary job duties did not include:

a. Hiring;

b. Firing;

c. Disciplining;

d. Supervising and delegating; and

e. Exercising meaningful independent judgment and discretion.

46. The Plaintiffs', the Collective Action, and the Class Members' primary duties were manual in nature. The performance of manual labor duties occupied the majority of their working hours.

47. Pursuant to its centralized, company-wide policy, pattern and/or practice, Defendant classified Plaintiffs, the Collective Action Members, and the Class Members, and

other similarly situated current and former employees holding comparable positions but different titles, as exempt from coverage of the overtime provisions of the FLSA and NYLL.

48. Upon information and belief, Defendant did not perform a person-by-person analysis of Plaintiffs', the Collective Action, and the Class Members' job duties when making the decision to classify them, and other similarly situated current and former employees holding comparable positions but different titles, as exempt from the FLSA's and NYLL's overtime protections.

49. Defendant's unlawful conduct as described above, was willful and/or in reckless disregard of the applicable wage and hour laws pursuant to Defendant's centralized, company-wide policy, pattern, and/or practice of attempting to minimize labor costs by violating the FLSA and NYLL.

50. Defendant established labor budgets to cover labor costs for the stores in which Plaintiffs and similarly situated DMs worked. The wages of Defendant's store-level employees were deducted from the labor budgets. However, Defendant did not provide sufficient money in the labor budgets to cover all hours needed to complete the necessary non-exempt tasks in each store. Defendant knew or recklessly disregarded the fact that the underfunding of store labor budgets resulted in Plaintiffs and other similarly situated DMs (who were not paid overtime) working more than 40 hours in a workweek without receiving any additional overtime compensation, which allowed Defendant to avoid paying additional wages (including overtime) to the non-exempt, store-level employees.

51. Defendant knew, by virtue of the fact that its store managers and District Managers (as its authorized agents) actually saw the Plaintiffs and other similarly situated DMs perform primarily manual labor and non-exempt duties, that a result of the underfunded labor

budgets was to limit the amount of money available to pay non-exempt employees to perform such work. Defendant knew that Plaintiffs and other similarly situated DMs were not performing activities that would suffice to make their actual job duties comply with any FLSA exemption and, inasmuch as Defendant is a substantial corporate entity aware of its obligations under the FLSA, it, accordingly, acted willfully or recklessly in failing to classify Plaintiffs and other similarly situated DMs as non-exempt employees.

52. Defendant is aware or should have been aware, through store managers and District Managers (as its authorized agents), that DMs were primarily performing non-exempt duties. As a retailer operating over 160 stores throughout the country (not to mention the retail stores in other divisions), Defendant knew or recklessly disregarded the fact that the FLSA and NYLL required it to pay employees primarily performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

53. As part of its regular business practice, Defendant intentionally, willfully, and repeatedly engaged in a policy, pattern, and/or practice of violating the FLSA and NYLL with respect to Plaintiffs, the Collective Action, and the Class Action Members. This policy, pattern and/or practice includes, but it is not limited to the foregoing knowledge of its obligations and the kind of work that Plaintiffs, the Collective Action, and the Class Action Members were and have been performing, and that, as a result, Defendant has been:

a. willfully misclassifying Plaintiffs, the Collective Action, and the Class Action Members as exempt from the overtime requirements of the FLSA;

b. willfully failing to pay Plaintiffs, the Collective Action, and the Class Action Members overtime wages for hours that they worked in excess of 40 hours per workweek; and

c. willfully failing to provide enough money in its store-level labor budgets for its non-exempt employees to perform their duties and responsibilities, forcing its exempt DMs to perform such non-exempt tasks.

54. Defendant's willful violations of the FLSA and NYLL is further demonstrated by the fact that during the course of the Collective Action and Class Action Period and continuing to the present, Defendant failed to maintain accurate and sufficient time records for Plaintiffs, the Collective Action, and the Class Members. Defendant acted recklessly or in willful disregard of the FLSA and NYLL by instituting a policy and/or practice that did not allow Plaintiffs to record all hours worked, but only allowed them to report a maximum of 40 hours worked per week.

55. During the course of the Collective Action and Class Action Period, Defendant failed to post or keep posted a notice explaining the minimum wage and overtime wage requirements, as provided under the FLSA and NYLL. This failure to post or keep posted a notice explaining the minimum wage and overtime wages was willful or in reckless disregard of the Plaintiffs' and other similarly situated DMs' rights under the FLSA and NYLL.

56. Due to the foregoing, Defendant's failure to pay overtime wages for work performed by Plaintiffs, the Collective Action, and the Class Action Members in excess of 40 hours per week was willful.

FIRST CLAIM FOR RELIEF:
(FAIR LABOR STANDARDS ACT: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiffs and All Collective Action Members)

57. Plaintiffs, on behalf of themselves and all of the Collective Action Members, reallege and incorporate by reference paragraphs 1-56 as if they were set forth again herein.

58. At all relevant times, Defendant 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. §§ 206(a) and 207(a).

59. At all relevant times, Defendant employed Plaintiffs, and employed or continues to employ, each of the Collective Action Members within the meaning of the FLSA.

60. Plaintiffs consent in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

61. At all relevant times and continuing to the present time, Defendant had a policy and practice of refusing to pay overtime compensation to their DMs and similarly situated employees in comparable positions but having different titles, for hours worked in excess of 40 hours per workweek.

62. As a result of Defendant's willful failure to compensate their employees, including Plaintiffs and the Collective Action Members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendant has violated and, continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

63. As a result of Defendant's willful failure to record, report, credit and/or compensate their employees, including Plaintiffs and the Collective Action Members, Defendant has failed to make, keep and preserve records with respect to each of their employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

64. As a result of Defendant's policy and practice of minimizing labor costs by underfunding the labor budget for its stores, Defendant knew or recklessly disregarded the fact

that Plaintiffs and the Collective Action Members were primarily performing manual labor and non-exempt tasks.

65. Due to Defendant's failure to provide enough labor budget funds, failure to take into account the impact of the underfunded labor budgets on the job duties of Plaintiffs and the Collective Action Members, Defendant's actual knowledge, through its store managers and District Managers that the primary duties of Plaintiffs and Collective Action Members was manual labor and other non-exempt tasks, Defendant's failure to perform a person-by-person analysis of Plaintiffs' and the Collective Action Members' job duties to ensure that they were performing exempt job duties, Defendant's instituting a policy and practice that did not allow Plaintiffs and Collective Action Members to record all hours worked, but only allowing them to report a maximum of 40 hours worked per week, and Defendant's failure to post or keep posted a notice explaining the minimum wage and overtime wage requirements, Defendant knew and/or showed reckless disregard that its conduct was prohibited by the FLSA. 29 U.S.C. § 255(a).

66. As a result of Defendant's FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action Members, are entitled (a) to recover from Defendant their unpaid wages for all of the hours worked by them, as overtime compensation, (b) to recover an additional, equal amount as liquidated damages for Defendant's willful violations of the FLSA, and (c) to recover their unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF:
(NEW YORK LABOR LAW: UNPAID OVERTIME WAGES)
(Brought on Behalf of Plaintiffs Lawson and McEarchen and All Class Members)

67. Plaintiffs Lawson and McEarchen, on behalf of themselves and all Class Members, reallege and incorporate by reference paragraphs 1-56 as if set forth again herein.

68. At all times relevant to this action, Plaintiffs Lawson and McEarchen were employees and Defendant was an employer within the meaning of the NYLL.

69. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendant.

70. Defendant failed to pay Plaintiffs Lawson and McEarchen and the Class overtime wages to which they are entitled under the NYLL.

71. By virtue of Defendant's failure to pay Plaintiffs Lawson and McEarchen and the Class Members overtime wages for all hours worked in excess of 40 hours per week, they have willfully violated NYLL Article 19, §§ 650 et seq., and the supporting New York State Department of Labor Regulations, including but not limited to the regulations in 12 N.Y.C.R.R., Part 142.

72. As a result of Defendant's policy and/or practice to minimize labor costs by providing its stores with an underfunded labor budget, Defendant willfully caused Plaintiffs and the Class Members to perform primarily manual labor and non-exempt tasks.

73. Due to Defendant's failure to provide enough labor budget funds, failure to take into account the impact of the limited labor budgets on the job duties of Plaintiffs and the Class Members, Defendant's actual knowledge, through its store managers and district managers, that the primary duties of Plaintiffs and Class Members was manual labor and other non-exempt tasks, Defendant's failure to perform a person-by-person analysis of Plaintiffs' and the Class Members' job duties to ensure that they were performing exempt job duties, Defendant's instituting a policy and practice that did not allow Plaintiffs to record all hours worked, but only allowing them to report a maximum of 40 hours worked per week, and Defendant's failure to post or keep posted a notice explaining the minimum wage and overtime wage requirements,

Defendant knew and showed reckless disregard whether its conduct was prohibited by the NYLL.

74. As a result of Defendant's willful violations of the NYLL, Plaintiffs Lawson and McEarchen and the Class Members are entitled to recover from Defendant their unpaid overtime wages, reasonable attorneys' fees and costs of the action, liquidated damages and pre-judgment and post-judgment interest.

THIRD CLAIM FOR RELIEF
(NEW YORK LABOR LAW: FAILURE TO COMPLY WITH NOTICE AND RECORDKEEPING REQUIREMENTS)
(Brought on Behalf of Plaintiffs Lawson and McEarchen and All Class Members)

75. Plaintiffs Lawson and McEarchen, on behalf of themselves and all Class Members, reallege and incorporate by reference paragraphs 1- 56, as if set forth again herein.

76. NYLL § 195(4) requires, among other things, that Defendant establish and maintain, for at least three years, payroll records showing the hours worked, gross wages, deductions and net wages for each employee.

77. NYLL § 661 requires that Defendant maintain, *inter alia,* true and accurate records of hours worked by each employee covered by an hourly minimum wage rate, and the wages paid to all employees.

78. 12 N.Y.C.R.R. § 142-2.6 requires that Defendant establish, maintain and preserve, for six years, weekly payroll records showing, *inter alia*, each employee's name, wage rate, number of hours worked daily and weekly, amount of gross and net wages, deductions from gross wages, and any allowances claimed as part of the minimum wage.

79. NYLL § 195(3) requires that Defendant furnish each of its employees with a statement with every payment listing gross wages, deductions and net wages, and upon request of an employee, an explanation of the computation of wages.

80. N.Y.C.R.R. § 142-2.7 requires Defendant to furnish each employee with a statement with every payment of wages, listing hours worked, rates paid, gross and net wages, deductions, and allowances, if any, claimed as part of the minimum wage.

81. Defendant did not provide the Plaintiffs and members of the Class with the requisite notices and statements or maintain the time records of hours worked as described above.

82. As a result of Defendant's failure to comply with the notice and record keeping requirements of NYLL §195(1) and 195(3), Plaintiffs Lawson and McEarchen and the Class Members are entitled to recover from Defendant all penalties provided by NYLL § 198(1)b and 198(1)d.

PRAYER FOR RELIEF

Wherefore, Plaintiffs seek the following relief on behalf of themselves and all others similarly situated DMs, and seek an order or orders providing the following relief:

a. Designation of this action as an FLSA collective action on behalf of Plaintiffs and the Collective Action Members, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated Collective Action Members apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual consents to sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

c. An award of unpaid wages for all hours worked in excess of 40 in a workweek at a rate of time and one-half of the regular rate of pay due under the FLSA and

NYLL using the following common methodology for calculating damages: ((Annual Salary ÷ 52) ÷ 40) x Total Number of Overtime Hours Worked x 1.5;

d. An award of liquidated and/or punitive damages as a result of Defendant's willful failure to pay for all hours worked in excess of 40 in a workweek at a rate of time and one-half of the regular rate of pay pursuant to 29 U.S.C. § 216 and the NYLL;

e. An award of damages representing the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;

f. Penalties under NYLL §§ 198(1)(b) and 198(1)(d) for the Defendant's failure to comply with the notice and record keeping requirements of NYLL §§ 195(1) and 195(3);

g. Certification of the claims in this case brought under state law as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

h. Designation of Plaintiffs Lawson and McEarchen as representatives of the Class, and counsel of record as Class Counsel;

i. Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under NYLL Article 19, §§ 650 *et seq*., and the supporting New York State Department of Labor regulations;

j. Injunctive relief, pursuant to the NYLL, enjoining Defendant from engaging in the practices alleged herein;

k. An award of prejudgment and post-judgment interest;

l. An award of costs and expenses of this action together with reasonable attorneys' and experts' fees and an award of a service payment to Plaintiffs;

m. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint.

Dated: Rye Brook, New York
August 16, 2013

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