

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSUE ZAPATA, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

MV TRANSPORTATION, INC., and **MV
CONTRACT TRANSPORTATION, INC.**,

Defendants.

Case No.

COLLECTIVE AND CLASS ACTION COMPLAINT WITH JURY DEMAND

Plaintiff **JOSUE ZAPATA**, (hereinafter referred to as “Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, **JTB LAW GROUP, LLC**, hereby brings this Collective and Class Action Complaint against Defendants, **MV TRANSPORTATION, INC.**, and **MV CONTRACT TRANSPORTATION, INC.**, (hereinafter referred to as “Defendants”), and states as follows:

INTRODUCTION

1. Plaintiff brings this action, individually and as a collective action on behalf of all others similarly situated Drivers who elect to opt-in to this action to recover unpaid overtime wages, liquidated damages, and reasonable attorneys’ fees and costs as a result of Defendants’ willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.* and attendant regulations at 29 C.F.R. §516, *et seq.*

2. In addition, Plaintiff also brings this action, individually and as a Rule 23 class action on behalf of all others similarly situated Drivers to recover unpaid overtime wages, liquidated damages, pre-judgment interest, and reasonable attorneys’ fees and costs as a result of Defendants’ violation of the New York Labor Law, N.Y. Labor Law §§ 650 *et seq.*, 160 *et seq.*,

190, *et seq.* and 12 NYCRR § 142-2.2, *et seq.*, (collectively the “NYLL”) and any other claims that can be inferred from the facts set forth herein.

3. Defendants operate a business providing paratransit services for elderly and disabled individuals in the New York City metropolitan area, among other regions in the United States.

4. Defendants have employed a staff of hourly-paid Drivers, including Plaintiff, at their bus depot in Brooklyn, New York.

5. Defendants violated the FLSA by failing to pay Drivers for post-shift time spent filling out end-of-shift paperwork.

6. Defendants also deducted time from Drivers’ pay for meal breaks with respect to shifts in which they did not receive any bona fide uninterrupted meal breaks.

7. In addition, Defendants failed to pay Drivers compensation for attending mandatory safety meetings outside their scheduled shifts that were directly related to their jobs.

8. As a result, there were many weeks in which Plaintiff and other Drivers were not paid at any rate (let alone 1.5 of their regular rate of pay) for all their hours worked in excess of forty (40).

9. The FLSA and NYLL require non-exempt employees to be compensated for all hours worked and overtime wages for all hours worked in excess of forty (40) hours in a workweek inclusive of hours worked outside their scheduled shifts pursuant to 29 U.S.C. § 207(a)(1) and 12 NYCRR § 142-2.2.

10. As Drivers, Plaintiff and the putative FLSA collective and Rule 23 class members performed primary job duties that do not fall within any exemptions from minimum wage and overtime under the FLSA and NYLL.

11. Plaintiff brings this collective action pursuant to the FLSA, 29 U.S.C. § 216(b) of all Drivers employed by Defendants as hourly Drivers for relief for violation of the FLSA, as a collective action, defined as follows:

All Drivers who worked for the Defendants at any time during the period of three (3) years prior to the commencement of this action through the date of judgment.

12. Plaintiff seeks to send a notice pursuant to 29 U.S.C. § 216(b) to all Drivers of Defendants permitting them to assert FLSA claims in this collective action by filing consent forms.

13. Plaintiff asserts his NYLL claims not only individually, but also on behalf of a putative NYLL class pursuant to Fed. R. Civ. P. 23, defined as:

All Drivers who worked for the Defendants in New York at any time from 6 years prior to the filing of this Complaint through the date of judgment.

14. For at least six (6) years prior to the filing of this Complaint, Defendants have willfully and intentionally committed widespread violations of the above-described statutes and corresponding regulations, in the manner described herein.

JURISDICTION AND VENUE

15. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under 29 U.S.C. § 201, *et seq.*

16. The court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. §1367 because it derives from a common nucleus of operative facts as Plaintiff's federal claim.

17. The Court has personal jurisdiction over Defendants MV Transportation, Inc., and

MV Contract Transportation because it conducted business in New York, and has significant contacts with New York that are related to Plaintiff's claims as well as the claims of the Collective and Class, including employing New York residents, including Plaintiff, to work in New York.

18. Venue is proper in the District of New York pursuant to 28 U.S.C. § 1391(b)(2) because Defendants employed Plaintiff in this district and because a substantial portion of the events or omissions that give rise to the Plaintiff's claims occurred in this district.

PARTIES

Defendants

19. Defendant MV Transportation of California is a California corporation operating in New York with its principal place of business located at 2711 N Haskell Avenue, Dallas, Texas 75204.

20. Defendant MV Contract Transportation, Inc., is a Delaware corporation operating in New York with its principal place of business located at 2711 N Haskell Avenue, Dallas, Texas 75204.

21. Defendants are privately owned transportation companies with a registered agent and a process mailing address at 111 Eighth Avenue, New York, NY 10011.

22. Defendants owned and operated a bus depot located at 1882 Atlantic Avenue, Brooklyn NY 11233, from which Defendants provided paratransit services to their clients within the New York metropolitan area.

23. Defendants shared employees and operated as one business in all respects.

Plaintiff

24. Plaintiff Josue Zapata is a resident of Ridgewood, New York and signed a consent

form to join this lawsuit, which is attached as *Exhibit A*.

25. Defendants employed Plaintiff as a Driver from approximately October 2012 to October 2016.

26. Plaintiff's job duties as a Driver consisted of driving elderly and disabled individuals to and from hospitals and other locations throughout the New York City area.

FACTUAL ALLEGATIONS

27. Defendants are employers, as defined under 29 U.S.C. § 203(d) of the FLSA and N.Y. Labor Law §§ 190(3), 651(6).

28. Plaintiff Josue Zapata is an "employee" of Defendants within the meaning of 29 U.S.C. § 203(e)(1) and N.Y. Labor Law §§ 190(2), 651(5).

29. Defendants were and continue to be "an enterprise engaged in commerce" within the meaning of the FLSA.

30. Defendants have an annual gross business volume in excess of \$500,000.

31. Defendants have two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

32. Defendants "suffered or permitted" Plaintiff and the putative FLSA collective and Rule 23 class members to work and thus "employed" them within the meaning of N.Y. Labor Law §§ 651(5) and 29 U.S.C. § 203(g) of the FLSA.

33. Plaintiff received an employee handbook upon hiring from Defendant MV Transportation, Inc.

34. Plaintiff received paystubs from Defendant MV Contract Transportation, Inc.

35. Plaintiff's hourly rate was \$14.95 an hour.

36. At all times, Defendants employed Plaintiff as an hourly-paid Driver who

performed duties that are not exempt from any minimum wage and overtime requirements.

37. Driver duties included, but were not limited to transporting passengers.

38. As a Driver, Plaintiff was required to work a full-time schedule consisting of at least five (5) shifts per week, each consisting approximately ten (10) hours per day.

39. In addition, Defendants required Drivers to perform post-shift work in addition to their shift for which they are not compensated.

40. Post-shift work consists of filing out paperwork detailing information with respect to the condition of the vehicle and filling out receipts for that day's pick-ups and drop-offs, among other things.

41. Defendants maintained a policy of not paying Drivers for post-shift work.

42. Defendants deducted time from Plaintiff's pay for meal breaks with respect to shifts in which Plaintiff did not receive a *bona fide* uninterrupted meal break.

43. For example, in both workweeks of January 9, 2016 to January 15, 2016, and March 19, 2016 to March 25, 2016, Plaintiff worked over forty (40) hours and was not paid for additional time spent performing post-shift work or for the time spent working through his unpaid meal break.

44. In addition, Defendants failed to properly pay Plaintiff and other Drivers for attending mandatory safety meeting directly related to the job as required by 29 CFR 785.27.

45. The FLSA requires employers to maintain records of all hours worked and wages paid to employees. 29 U.S.C.A. § 211(c).

46. Defendants failed to keep certain records of total number of hours actually worked by employees each workweek.

47. At all relevant times alleged herein, Plaintiff and other Drivers have been

subjected to the common pay policy and practice of Defendants as stated herein that violated the FLSA and NYLL.

48. Defendants' wrongful acts and/or omissions/commissions, as alleged herein, were not made in good faith, or in conformity with or in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the state and/or U.S. Department of Labor and/or any state department of labor, or any administrative practice or enforcement practice or enforcement policy of such departments.

49. Defendants knowingly, willfully, and/or with reckless disregard carried out its illegal pattern or practice regarding its failure to pay Plaintiff proper overtime compensation. As set forth herein, other prior and current FLSA collective and Rule 23 class members were subjected to the same wrongful policies, practices, and/or procedures.

COLLECTIVE ACTION ALLEGATIONS

50. Plaintiff re-alleges and incorporates all previous paragraphs herein.

51. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on his own behalf and on behalf of:

All Drivers who worked for the Defendants at any time during the period of three (3) years prior to the commencement of this action through the date of judgment.

(hereinafter referred to as the "FLSA Collective"). Plaintiff reserves the right to amend this definition as necessary.

52. With respect to the claims set herein, a collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because: (a) they have been or are performing the same or similar job

duties as one another on behalf of Defendants; (b) they were or are subject to the same or similar unlawful practices, policy, or plan; and (c) their claims are based upon the same factual and legal theories.

53. The employment relationships between Defendants and every FLSA Collective member are the same and differ only by name, location, and rate of pay.

54. Members of the FLSA collective are all improperly compensated for the hours worked inclusive of time spent filling out end-of-shift paperwork which took thirty (30) minutes to complete each day.

55. Members of the FLSA collective had their pay wrongfully deducted for meal breaks on days in which they did not receive any *bona fide* uninterrupted meal breaks.

56. As a result of the foregoing policies, there were many weeks in which Defendants failed to compensate members of the FLSA collective for time worked at any rate of pay, let alone their regular rates of pay or their overtime rates of pay as required by the FLSA.

57. The precise number and identities of Collective members should be readily available from a review of Defendants' personnel and payroll records.

58. Defendants are aware that the FLSA applies to their business and they are required to adhere to the rules under the FLSA.

59. Defendants' conduct and practices, described herein, were and are willful, intentional, unreasonably, arbitrary, and in bad faith.

RULE 23 CLASS ACTION ALLEGATIONS

60. Plaintiff re-alleges and incorporates all previous paragraphs herein.

61. Plaintiff additionally seeks to maintain this action as a class action, pursuant to the Federal Rules of Civil Procedure Rule 23 (Fed. R. Civ. P. 23).

62. The Rule 23 class is defined as follows:

All Drivers who worked for the Defendants in New York at any time from 6 years prior to the filing of this Complaint through the date of judgment.

(hereinafter referred to as the “Class members”). Plaintiff reserves the right to amend this definition as necessary.

63. The members of the Rule 23 class are so numerous that joinder of all Class members in this case would be impractical. Plaintiff reasonably estimates that there are at least forty (40) Class members. Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

64. There is a well-defined community of interest among Class members and common questions of law and fact predominate in this action over any questions affecting each individual Class member. These common legal and factual questions, include, but are not limited to, whether Class members were properly compensated for post-shift work and attending mandatory safety meetings as well as whether Class members received an uninterrupted *bona fide* meal break for which Defendants deducted their pay.

65. Plaintiff’s claims are typical of those of the Class members in that they and all other Class members suffered damages as a direct and proximate result of Defendants’ common and systemic payroll policies and practices. All of the Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to compensate members of the Class for time worked at any rate of pay, let alone their regular rates of pay or their overtime rates of pay as required by the FLSA. Any lawsuit brought by an employee of Defendants would be identical to a suit brought by any other employee for the same violations and separate litigation would cause a risk of inconsistent results.

66. Plaintiff is employed by Defendants in the same capacity as all of the Class

members. All Class members are/were treated the same or similarly by management with respect to pay or lack thereof. Thus, there are common questions of law and fact which are applicable to each and every one of the Class members.

67. Plaintiff will fully and adequately protect the interests of the Class members and has retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Plaintiff and his counsel do not have interests that are contrary to, or conflicting with, the interests of the Class members.

68. Defendants' corporate-wide policies and practices affected all Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each Class member. Plaintiff's claim arises from the same legal theories as all other Class members. Therefore, this case will be more manageable and efficient as a Class action. Plaintiff and his counsel know of no unusual difficulties in this case.

COUNT I
(29 U.S.C. § 216(b) Individual Claim)
Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
FAILURE TO PAY OVERTIME

69. Plaintiff re-alleges and incorporates all previous paragraphs herein.

70. 29 U.S.C. § 207(a)(1) provides:

[N]o 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 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.

71. Plaintiff regularly worked over forty (40) hours a week as required by Defendants.

72. Defendants failed to pay Plaintiff for post-shift work at time and a half (1.5) of Plaintiff's regular rate of pay in workweeks where Plaintiff worked over forty (40) hours.

73. Defendants deducted time from Plaintiff's time sheets based on supposed meal break periods, including time that exceeded forty (40) hours in a workweek, despite the fact that in many such instances Plaintiff was required to perform his normal compensable work duties and/or was not relieved from duty.

74. Defendants' conduct and practices, described herein, were willful, intentional, unreasonably, arbitrary, and in bad faith.

75. Because Defendants willfully violated the FLSA, a three (3) year statute of limitations shall apply to such violation pursuant to 29 U.S.C. § 255(a).

76. As a result of Defendants' uniform policies and practices described above, Plaintiff was illegally deprived of overtime compensation earned, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

COUNT II
(29 U.S.C. § 216(b) Collective Action)
Violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.
FAILURE TO PAY OVERTIME

77. Plaintiff re-alleges and incorporates all previous paragraphs herein.

78. Plaintiff and the FLSA collective members regularly worked in excess of forty (40) hours per workweek.

79. Defendants failed to pay Plaintiff and other Drivers for post-shift work at the federally mandated overtime compensation at a rate not less than time-and-a-half (1.5) of their regular rate of pay for worked hours in excess of forty (40) per week.

80. Defendants deducted time from Plaintiff's and other Drivers' time sheets based on

supposed meal break periods, including time that exceeded forty (40) hours in a workweek, despite the fact that in many such instances Plaintiff and other Drivers were required to perform their normal compensable work duties and were not relieved from duty.

81. Defendants' conduct and practices, described herein, was willful, intentional, unreasonably, arbitrary, and in bad faith.

82. Because Defendants willfully violated the FLSA, a three (3) year statute of limitations applies to such violation pursuant to 29 U.S.C. § 255(a).

83. As a result of Defendants' uniform policies and practices described above, Plaintiff and the FLSA collective members were illegally deprived of proper overtime compensation earned, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid amounts, liquidated damages, reasonable attorneys' fees, costs and other compensation pursuant to 29 U.S.C § 216(b).

COUNT III
(NYLL, N.Y. Labor Law § 650 *et seq.*, Individual Claims)
FAILURE TO PAY OVERTIME

84. Plaintiff re-alleges and incorporates all previous paragraphs herein.

85. 12 NYCRR 142-2.2 provides:

An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13 of 29 U.S.C. 201 *et seq.*, the Fair Labor Standards Act of 1938...

86. Defendants employed Plaintiff within the meaning of the NYLL.

87. Plaintiff regularly worked over forty (40) hours a week as required by Defendants.

88. Defendants failed to pay Plaintiff for post-shift work at the state mandated

overtime compensation at a rate not less than time-and-a-half (1.5) of Plaintiff's regular rate of pay in workweeks where Plaintiff worked over forty (40) hours.

89. Defendants failed to pay Plaintiff compensation for attending mandatory safety meetings directly related to his job outside of his schedule shifts.

90. Defendants deducted time from Plaintiff's time sheets based on supposed meal break periods, including time that exceeded forty (40) hours in a workweek, despite the fact that in many such instances Plaintiff was required to perform his normal compensable work duties and was not relieved from duty.

91. Defendants' conduct and practices, described herein, was/is willful, intentional, unreasonable, arbitrary and in bad faith.

92. As a result of the foregoing, Plaintiff was illegally denied proper overtime compensation, in such amounts to be determined at trial, and is entitled to recovery of such total unpaid wages, liquidated damages, and reasonable attorneys' fees and costs pursuant to NYLL.

COUNT IV
Fed R. Civ. P. 23 Class Action
Violations of NYLL, N.Y. Labor Law § 650 et seq.,

93. Plaintiff re-alleges and incorporates all previous paragraphs herein.

94. Defendants employed Plaintiff and other Drivers within the meaning of the NYLL.

95. Plaintiff and other Drivers regularly worked in excess of forty (40) hours per workweek.

96. Defendants failed to compensate Plaintiff and other Drivers for post-shifts work at the state mandated overtime compensation at a rate not less than time-and-a-half (1.5) of Plaintiff's regular rate of pay in workweeks where Plaintiff worked over forty (40) hours.

97. Defendants failed to pay Plaintiff and other Drivers compensation for attending mandatory safety meetings directly related to their job outside of their schedule shifts.

98. Defendants deducted time from Plaintiff and other Drivers' time sheets based on supposed meal break periods, including time that exceeded forty (40) hours in a workweek, despite the fact that in many such instances Plaintiff was required to perform his normal compensable work duties and was not relieved from duty.

99. Defendants' conduct and practices, described herein, were/are willful, intentional, unreasonable, arbitrary and in bad faith.

100. As a result of the foregoing, Plaintiff and other Drivers were illegally denied proper overtime compensation, in such amounts to be determined at trial, and are entitled to recovery of such total unpaid wages, liquidated damages, and reasonable attorneys' fees and costs pursuant to NYLL.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief against Defendants:

- (A) A declaratory judgment that Defendants' wage practices alleged herein violate the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (B) A declaratory judgment that Defendants' wage practices alleged herein violate the overtime provisions of the New York Labor Law, N.Y. Lab. Law §§ 650 *et seq.*, 160 *et seq.*, 190, *et seq.* and 12 NYCRR § 142-2.2;
- (C) An Order for injunctive relief ordering Defendants to comply with the FLSA and NYLL and end all of the illegal wage practices alleged herein;

- (D) An Order certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein;
- (E) An Order certifying this action as a class action pursuant to Fed R. Civ. P. 23 with respect to the NYLL claims set forth herein;
- (F) An order for Defendants to disclose in computer format, or in print if no computer readable format is available, the names, addresses, e-mail addresses, telephone numbers, dates of birth, job titles, dates of employment and locations of employment of all FLSA collective and Rule 23 class members;
- (G) An order authorizing Plaintiff's counsel to send notice(s) of this action to all FLSA collective and Rule 23 class members, including the publishing of notice in a manner that is reasonably calculated to apprise the FLSA collective members of their rights by law to join and participate in this lawsuit;
- (H) An order designating Lead Plaintiff as the representative of the FLSA collective and Rule 23 class in this action;
- (I) An order designating the undersigned counsel as counsel for the FLSA collective and Rule 23 Class in this action;
- (J) Judgment for damages for all unpaid overtime compensation and liquidated damages to which Plaintiff and the FLSA collective members are lawfully entitled under the FLSA, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516, *et seq.*;
- (K) Judgment for damages for all unpaid overtime compensation, liquidated damages and pre-judgment interest to which Plaintiff and the Rule 23 class members are lawfully entitled under the New York Labor Law, N.Y. Lab. Law §§ 650 *et seq.*, 160 *et seq.*, 190, *et seq.* and 12 NYCRR § 142-2.2;

- (L) An incentive award for the Lead Plaintiff for serving as representative of the FLSA collective and Rule 23 class in this action;
- (M) Declaring Defendants willfully violated the FLSA and the Department of Labor's attendant regulations as cited herein;
- (N) Declaring Defendants violated and that said violations were intentional, willfully oppressive, fraudulent and malicious;
- (O) Awarding reasonable attorneys' fees and costs incurred by Plaintiff in this action as provided by the FLSA and NYLL;
- (P) Judgment for any and all civil penalties to which Plaintiff and the FLSA collective and Rule 23 class members may be entitled; and
- (Q) Awarding such other and further relief as this Court deems necessary, just and proper.

JURY DEMAND

Plaintiff, Josue Zapata, individually and on behalf of all other FLSA collective and Rule 23 Class members, by and through his attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled claims.

RESPECTFULLY SUBMITTED,

Dated: May 8, 2018

By: /s/ Nicholas R. Conlon
Nicholas R. Conlon
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nicholasconlon@jtblawgroup.com
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Counsel for Plaintiff

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSUE ZAPATA, individually, and on behalf
of others similarly situated,

Plaintiff,

vs.

MV TRANSPORTATION, INC., and **MV
CONTRACT TRANSPORTATION, INC.**,

Defendants.

Case No.

CONSENT TO SUE

I, Josue Zapata, hereby consent to be a Plaintiff in the case captioned above. I hereby consent to the bringing of any claims I may have under the Fair Labor Standards Act and New York Labor Law for unpaid overtime wages, liquidated damages, pre-judgment interest, attorney's fees and costs and other relief and any other applicable wage and hour law against the Defendants. I further consent to bringing these claims on a collective and class action basis with other current/former employees of Defendants, to be represented by and through my attorneys at JTB Law Group, LLC. I agreed to be bound by any settlement of this action or adjudication by the Court. I authorize JTB Law Group, LLC, as well as its successors and assigns, to represent me in this case.

Signed: _____  **Dated:** 05/07/2018

Name: Josue Zapata

Address: 511 Woodward ave #3L
Street

Ridgewood.NY 11385
City, State, Zip Code

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.)

<p>I. (a) PLAINTIFFS</p> <p>JOSUE ZAPATA, individually, and on behalf of others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Queens County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Jason T. Brown (NY#4389854); Nicholas R. Conlon (NY#801616) JTB Law Group, LLC 155 2nd St, Suite 4, Jersey City, NJ 07302, (877) 561-0000</p>	<p>DEFENDANTS</p> <p>MV TRANSPORTATION, INC., and MV CONTRACT TRANSPORTATION, INC.,</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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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	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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<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"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<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	LABOR	SOCIAL SECURITY	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	<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	<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"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
	PRISONER PETITIONS	IMMIGRATION		
	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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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. § 216(b)

Brief description of cause:
Violations of the ("FLSA"), 29 U.S.C. §201, et seq. and attendant regulations at 29 C.F.R. §516, et seq.

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 5/8/18 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, Nicholas R. Conlon, counsel for Josue Zapata, 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:

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: 

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims MV Transportation Didn't Pay Drivers Proper Overtime](#)
