

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

GARY CALDWELL  
AFUWAPE ABOLADE  
BARBARA ABRAMSON  
OPEYEMI AFOLAYAN  
TUNDE AKINDUTI  
FESTUS AKINRODOYE  
ZIMARO ALI  
MARITZA ARBOLEDA  
ANGEL AYALA  
TAGENARINE BALGOBIN  
STEVEN BERAS  
MICHAEL BEROLATTI  
RICHARD BLAKE  
RICHARD BONI  
ANIROOD BUDHOO  
MICHAEL CHIN  
SHIBLI CHOWDHURY  
ILIR COBAJ  
CHRISTOPHER CREARY  
DOMINICK CRESCENZO  
MICHAEL CRUZ  
JOHN DALY  
RONALD EVELYN  
ROBERT FANTAUZZI  
SHAUN FEATHERSTONE  
GEORGE FLORES

Plaintiffs,

v.

CITY OF NEW YORK and THE  
FIRE DEPARTMENT OF  
THE CITY OF NEW YORK

Defendants.

Civil Action No. \_\_\_\_\_

(JURY TRIAL DEMANDED)

## **COMPLAINT**

Plaintiffs, by and through their counsel, the law firm of McGillivray Steele Elkin LLP, for their complaint against the City of New York (“New York City”) and the Fire Department of the City of New York (“FDNY”) (collectively “Defendants”), state as follows:

### **INTRODUCTION**

1. Plaintiffs are current and former employees of the Defendants, City of New York and FDNY, who work or have worked in the position of Fire Inspector in the New York City Fire Department. Plaintiffs bring this action for a declaratory judgment, back pay and other relief pursuant to 29 U.S.C. § 207 and 29 U.S.C. § 216(b) to remedy the Defendants’ willful and unlawful violations of federal law complained of herein.

2. Plaintiffs bring this action against Defendants on behalf of themselves and all others similarly situated as a collective action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) because of Defendants’ failure to pay Plaintiffs overtime compensation to which Plaintiffs are entitled under the FLSA. The Plaintiffs are similarly situated to each other because they have been subject to the same policies and/or practices that violate the FLSA whereby Defendants have suffered or permitted Plaintiffs to perform uncompensated overtime work outside of their paid shifts and during their unpaid meal periods. Plaintiffs are also similarly situated to each other because, while employed at FDNY, they have been subject to the same policies and/or practices that violate the FLSA whereby the Defendants fail to properly calculate the regular rate of pay upon which Plaintiffs’ overtime rate is based and fails to pay overtime compensation in a timely manner.

## **PARTIES**

3. Plaintiffs, all of whom are listed in Exhibit A, have each given their written consent to be Party-Plaintiffs in this action pursuant to 29 U.S.C. § 216(b). The written consent forms attached as Exhibit A set forth each Plaintiff's name and address.

4. Each of the Plaintiffs in this action while employed by Defendants has been an "employee" within the meaning of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 203(e)(1).

5. Defendant New York City is, among other things, a juridical entity amenable to suit under the FLSA in that it is, and was at all times material hereto, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x). The City of New York has a principal office and place of business located at Broadway and Park Row, New York, NY, 10007, and may be served with process by serving the Office of Corporation Counsel, 100 Church Street, New York, NY 10007.

6. Defendant Fire Department of the City of New York (FDNY) is an administrative division of New York City and is, among other things, a juridical entity amenable to suit under the FLSA in that it is, and was at all time material herein, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x). The FDNY's principal office is located at 9 MetroTech Center, Brooklyn, New York.

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

## FACTS

9. Plaintiffs are, and have been at all times material, employed by Defendants, within the last three years and continuing to date, in the position of Fire Inspector. In this position, Plaintiffs' principal job duties, like the principal job duties of all others similarly situated, include, but are not limited to: checking in with their supervisors and discussing with them any information their supervisor believes to be pertinent to their daily assignments, including obtaining their assignments for that day; planning and researching their daily fire inspection route and obtaining any necessary information in order to begin that route upon the start of their shift; preparing for and conducting fire inspections of buildings around the city; completing required paperwork after conducting the inspections; and, if assigned to work on large-scale inspections, coordinating with other Fire Inspectors assigned to their group for that day.

10. While working as Fire Inspectors, Plaintiffs and all others similarly situated routinely work over 40 hours a week. Specifically, each week they are regularly scheduled to work, and do work, five shifts of eight and one-half hours, inclusive of an uncompensated 30-minute lunch break. The Fire Inspectors' regularly scheduled shifts are generally 8:00 am to 4:30 pm. However, as described herein, because the City does not pay Plaintiffs for any time worked in excess of these scheduled shifts unless the work is preapproved in advance, the City regularly fails to compensate Plaintiffs for all hours worked over 40 in a workweek at a rate of one and one-half times their regular rate of pay.

11. In addition to their scheduled shifts and their preapproved, compensated overtime, because of the Defendants' uniform workplace policies and practices, Plaintiffs and all those similarly situated routinely work in excess of their regularly scheduled shifts, such that they necessarily work over 40 hours in a workweek. However, Defendants fail to compensate Plaintiffs

and all others similarly situated for all of these hours over 40 in a workweek at a rate of one and one-half times their regular rates of pay. Specifically, Defendants fail to compensate Plaintiffs and all others similarly situated for hours worked before and/or after their scheduled shifts and for work performed during their unpaid, 30-minute meal periods.

12. Additionally, while working as Fire Inspectors, Plaintiffs and all others similarly situated are occasionally compensated for hours worked over 40 in a workweek if the overtime hours were preapproved. However, when the Defendants compensate Plaintiffs for overtime hours which were preapproved, Defendants systematically fail to pay them for this overtime work at the correct regular rate of pay, as they fail to include certain differentials in the rate at which overtime is paid and regularly pay Plaintiffs weeks beyond the regular payday for the date(s) on which the overtime was worked.

**Defendants' Fair Labor Standards Act Violations are Willful**

13. Defendants track Fire Inspectors' time by way of a sign-in/sign-out sheet when Fire Inspectors are out in the field, in combination with Defendants' timekeeping system, CityTime, when they are assigned to report to and work out of the office. On those days that Plaintiffs are required to first report to the office, Defendants track Plaintiffs' work time via CityTime on a minute-by-minute basis. Plaintiffs' supervisors are aware that Plaintiffs and all others similarly situated are required to and do perform work before their scheduled shifts as they are aware of Plaintiffs field duties and schedule, and Plaintiffs and those similarly situated often log into and use their City-issued computers and/or check-in with their supervisors by City-issued phones at the time they begin work, prior to the start of their scheduled shift. Moreover, Defendants are aware that Plaintiffs and those similarly situated perform such pre-shift work as they filed a previous lawsuit alleging these claims on February 13, 2013 (*Perry v. City of New York*, Case No.

13-cv-1015 (S.D.N.Y.)); at no point after that case was filed have Defendants substantially changed the Plaintiffs' required work duties or the procedures and methods pursuant to which Plaintiffs are paid. However, Defendants do not pay the Fire Inspectors for all of their work. Instead, Defendants pay Plaintiffs and all others similarly situated based only on their scheduled shift hours and any pre-approved overtime hours.

14. Defendants utilize a program called "CityTime" to administer and calculate the pay of Plaintiffs and all others similarly situated. When Defendant City of New York programmed and implemented CityTime, it adopted a policy of utilizing a "pay-to-schedule" system (i.e., one that, by default, pays employees for their scheduled work hours) rather than a "pay-to-punch" system (i.e., one that, by default, pays employees for all the time between punch in and punch out).

15. Defendants are aware that the City's "pay-to-schedule" system fails to capture Plaintiffs' actual working hours and fails to pay employees for compensable work time. For example, in *Perry v. City of New York*, the Second Circuit affirmed a jury verdict in favor of New York City EMTs and Paramedics, also employed by the FDNY, in the amount of \$17.78 million for FLSA violations, including willfully failing to pay for pre-shift and post-shift time recorded on CityTime. 78 F.4th 502 (2d Cir. 2023). Notably, in that same case, the Second Circuit also affirmed that "knowledge of non-payment is irrelevant to FLSA liability." *Id.* at 515.

16. Defendant City of New York has repeatedly been held liable for failing to pay for recorded pre- and post-shift work; it is well aware of its obligation to pay employees for overtime work which is suffered or permitted, even if employees do not make a request for overtime compensation for that work or if that time is not pre-approved by Plaintiffs' superiors. *See, e.g., Lawtone-Bowles v. City of New York*, 1:16-cv-04240, 2020 WL 2833366, at \*4 (S.D.N.Y. June 1, 2020) ("Defendant[] . . . argu[es] . . . that Plaintiffs failed to report the unpaid overtime . . . . The

City has made this argument repeatedly in FLSA overtime litigation in this District and it has been unanimously rejected.”); *Foster/De La Cruz*, 2017 WL 11591568, at \*4, \*23-25 (in consolidated cases, granting summary judgment for two sets of plaintiffs—employees of the City’s Administration for Children’s Services and Human Resources Administration, respectively—on FLSA claims that they worked uncompensated overtime of which their managers were aware, despite failure to seek pre-approval or otherwise request compensation); *Perez v. City of New York*, 1:12-cv-04914, 2017 WL 4326105, at \*12-13 (S.D.N.Y. Sept. 27, 2017) (denying summary judgment to City on defense to FLSA liability based on claim that plaintiffs failed to “report” overtime on the CityTime system where “ample record evidence” demonstrated that the City knew or had reason to know plaintiffs were working unreported overtime hours); *Worley v. City of New York*, 1:17-cv-04337, 2020 WL 730326 (S.D.N.Y. Feb. 12, 2020) (granting summary judgment to plaintiffs for uncompensated pre-shift, post-shift, and meal period work about which the City was aware).

17. In fact, the former New York City Corporation Counsel has admitted, under oath, that it is an employer’s responsibility to ensure that employees get paid for work about which the employer is aware. *See Perry v. City of New York*, No. 1:13-cv-1015 (S.D.N.Y.), Dkt. 181 (Trial Transcript of October 16, 2019) at 969-70 (“[I]t would be . . . the supervisor’s responsibility to ensure that the employees get paid for work about which the employer is aware; correct?” “Correct.”). *See also Foster/De La Cruz*, 2017 WL 11591568, at \*9 (“[T]he City’s chief employment lawyer . . . concedes that where a manager observes an employee working [outside their shift], the manager has an obligation to make sure that employee is compensated for that time, even if the employee did not obtain pre-approval[.]”) (citations omitted).

18. Despite numerous decisions finding the Defendant City of New York liable for failing to pay for overtime work that is recorded, the City has failed to take any steps with respect to the CityTime system or its own processes and procedures to properly capture and compensate its workers for compensable time that is logged, but otherwise considered by CityTime to be “uncompensated” time.

19. Defendants have failed to conduct an audit or otherwise investigate any work minutes captured and treated as “uncompensated” in CityTime or other work records including, but not limited to, what Fire Inspectors are doing during the recorded time outside of their scheduled shift hours, or during their uncompensated meal periods, that appears on its timekeeping system and/or other City or FDNY records.

20. The City has also previously been held liable for failure to properly calculate employees’ regular rate of pay by failing to include differential payments, such as night shift differentials and other recurring payments, in the rate at which overtime is paid to employees. *See, e.g., Foster/De La Cruz*, 2017 WL 11591568, at \*32-35; *Lawtone-Bowles v. City of N.Y.*, 2020 WL 2833366, at \*5; *Lynch v. City of New York*, 291 F. Supp. 3d 537, 551-52 (S.D.N.Y. 2018). Despite these decisions, the City continues to fail to include such differential payments in Plaintiffs’ regular rate of pay.

21. Defendants have failed to seek advice from the U.S. Department of Labor regarding whether its pay policies and practices comply with the FLSA.

22. Upon information and belief, Defendants have not disciplined any Fire Inspector for performing unpaid overtime before and/or after their scheduled shift hours.

23. Some of the plaintiffs in the instant action were also plaintiffs in *Perry v. City of New York, et al.*, Case No. No. 1:13-cv-1015. In that case, the plaintiffs also raised the issue of



Defendants' failure to properly pay overtime for hours worked over 40 in a workweek. In *Perry*, the Parties settled the claims of the Fire Inspectors through August 16, 2019. Despite this earlier lawsuit, Defendants have nevertheless failed to make meaningful changes to correct their ongoing FLSA violations with respect to Fire Inspectors.

24. Plaintiffs' timekeeping and payroll data is in Defendants' exclusive possession and is not readily available to Plaintiffs. In addition, Plaintiffs' CityTime records and payroll data are "maintained across various [agency] branches, not available for download or electronic transfer, not text-searchable, not maintained for more than two years, and require[] a separate search for each pay period." *Murray v. City of New York*, No. 1:16-cv-08072, Dkt. 66 (S.D.N.Y. Oct. 18, 2017) at 3.

**Uncompensated Work Performed by Plaintiffs and All Others Similarly Situated**

25. While working as Fire Inspectors for FDNY, Plaintiffs and all others similarly situated regularly work over 40 hours a week. Specifically, Fire Inspectors are regularly scheduled to work five eight-and-a-half hour shifts with a 30-minute uncompensated meal (totaling a minimum of 40 hours of scheduled and compensated work per week). Thus, Plaintiffs and all others similarly situated are scheduled to perform a minimum of 40 hours of work per workweek as their regular schedule.

26. In addition to their 40 hours of regularly scheduled shifts, Plaintiffs and all others similarly situated frequently work additional hours in which they perform their regular job duties but do not receive compensation. Specifically, Plaintiffs routinely work additional hours outside of their regularly scheduled shifts and during their unpaid meal periods, all without compensation.

27. During the time outside their scheduled shifts (before and/or after their shifts, and during their unpaid meal periods), Plaintiffs and all others similarly situated perform their primary job duties, which include, but are not limited to, those duties enumerated in Paragraph 9. For

example, prior to their scheduled shifts, Fire Inspectors working in the field engage in necessary, integral, and indispensable tasks, such as: checking in with their supervisors and discussing with them any information their supervisor believes to be pertinent to their daily assignments, including obtaining their assignments for that day; planning and researching their daily fire inspection route and obtaining any necessary information in order to begin that route upon the start of their shift; completing required paperwork after conducting the inspections; and, if assigned to work on large-scale inspections, coordinating with other Fire Inspectors assigned to their group for that day. On those days they report to the office, Fire Inspectors complete project work, fill out required payroll information, and complete other required paperwork and tasks prior to the start of their scheduled shifts but after clocking in to CityTime.

28. On days that they are not assigned to come into the office to commence a shift, Fire Inspectors are expected to be out in the field, at their assigned inspection site, by the start of their scheduled shifts. Fire Inspectors can be disciplined if they fail to begin inspections at the start of their shifts. They are also expected to have required pre-inspection paperwork completed, as well as projections for the day, by the time the shift begins. They cannot meet this target without beginning to work at least 15-30 minutes before the start of their scheduled shifts.

29. Plaintiffs and all others similarly situated also perform uncompensated work during some or all of their 30-minute unpaid meal periods performing their regular job duties (those listed in Paragraphs 9 and 27) but are not compensated for this work time.

30. For example, Plaintiff Caldwell, who is a Fire Inspector assigned to conduct fire inspections in Queens, routinely works over 40 hours in a workweek without being paid for the hours worked over 40. Specifically, Plaintiff Caldwell performs approximately 30 minutes of work outside of his scheduled shift each day, performing the tasks enumerated in Paragraphs 9 and 27.

Additionally, Plaintiff Caldwell routinely works through his unpaid 30-minute meal period, either eating on site or while driving to the next assigned location. He misses at least some, if not all, of his meal period nearly every day of the week and is not compensated for that work time. When he works over 40 hours as described above, the City fails to compensate him for all of his time, including but not limited to time spent performing work tasks enumerated in Paragraphs 9 and 27 outside of his scheduled shift, and during his 30-minute unpaid meal period. Thus, Plaintiff Caldwell is regularly not compensated for at least 5 hours of additional overtime work beyond his scheduled shift each week.

31. The amount of uncompensated work hours for which Plaintiffs and those similarly situated have not been paid can be identified through the Defendants' timekeeping system, the sign-in/sign-out sheets, and through other work and pay records.

**Rate at Which Overtime is Paid to Plaintiffs and All Others Similarly Situated**

32. While working as Fire Inspectors during the last three years, Plaintiffs and all others similarly situated have received certain payments in addition to their basic pay. These payments include, but are not limited to, night shift differentials and other recurring pay differentials. These payments are made pursuant to Agency-wide policy and/or collective bargaining agreements, and thus they are paid to Plaintiffs and all others similarly situated. However, on occasions when Plaintiffs and those similarly situated are paid overtime compensation for pre-approved overtime work, Defendants wrongly fail to include these additional differential payments in the regular rate of pay used to calculate the overtime rate payable to Plaintiffs and those similarly situated.

33. The failure to include these premium payments in Plaintiffs' regular rate of pay means that when Plaintiffs receive paid overtime for working in excess of 40 hours in a week, they are paid at a rate for those overtime hours that is below the rate mandated by the FLSA.

34. Fire Inspectors employed by Defendants who receive premium payments pursuant to Agency-wide policy and/or collective bargaining agreements, including Plaintiffs, are similarly situated and routinely work more than 40 hours in a workweek but are denied proper compensation for hours worked in excess of 40 hours because Defendants continue to fail to include these payments in the regular rate of pay upon which the Plaintiffs' overtime rate is based. The precise amount of improperly paid overtime received by each Fire Inspector can be identified through the Defendants' timekeeping system and through other work and pay records.

**Late Payment of Overtime Worked**

35. In those instances in which Defendants have compensated Plaintiffs and those similarly situated for working hours in excess of 40 hours a week, Defendants are required to "approve" requests for overtime compensation prior to paying Plaintiffs for that time. Due to delays in "approval" of overtime compensation by Defendants and their managers, or for other reasons that are unrelated to Defendants' ability to determine the amount of overtime compensation that is owed to the Plaintiffs, Defendants routinely pay Plaintiffs for their overtime work more than one pay period after the date that Plaintiffs have been paid for their non-overtime work hours for that week (i.e., more than two pay periods after the overtime was worked).

36. Defendants have violated basic prompt payment principles of the FLSA by delaying Plaintiffs' overtime payments for working in excess of 40 hours a workweek by weeks, and in some cases months, with such delay not being reasonably necessary to compute Plaintiffs' overtime pay. The FLSA mandates that overtime compensation be paid on the regular payday for the period in which such workweek ends.

37. However, while working as Fire Inspectors during the last three years, Plaintiffs worked pre-approved overtime hours for which they were not promptly compensated in a timely

fashion. Specifically, through no fault of the Plaintiffs, Defendants did not pay Plaintiffs for such pre-approved overtime until at least 30 days after the overtime was worked.

38. All Fire Inspectors employed by Defendants are similarly situated and routinely work more than 40 hours in a workweek but are routinely compensated for pre-approved overtime work in an untimely manner (i.e., more than two pay periods after the overtime was worked). The precise amount of untimely paid overtime received by each Fire Inspector Plaintiff can be identified through the Defendants' timekeeping system and through other work and pay records.

### **COUNT I**

#### **FAILURE TO PAY OVERTIME FOR ALL HOURS PLAINTIFFS ARE SUFFERED OR PERMITTED TO WORK IN VIOLATION OF SECTION 7(a) OF THE FLSA, 29 U.S.C. § 207(a)**

39. Plaintiffs hereby incorporate by reference all preceding Paragraphs in their entirety and restate them herein.

40. At all times material herein, during those workweeks in which Plaintiffs and all others similarly situated have worked hours in excess of 40 hours a week, they have performed work activities, including but not limited to performing tasks enumerated in Paragraphs 9 and 27-28, without compensation, outside of their scheduled shifts and during their meal periods, all of which is recorded in Defendants' timekeeping records, sign-in/sign-out sheets, and other work logs. This additional, daily work has caused Plaintiffs and all others similarly situated to work in excess of 40 hours in a week without proper overtime compensation in violation of the FLSA. Accordingly, as a result of these pay practices, Defendants have failed to provide Plaintiffs and all others similarly situated with the rights and protections provided under section 7(a) of the FLSA, 29 U.S.C. § 207(a).

41. Section 207 of the FLSA requires the payment of overtime compensation to employees who work in excess of the hourly standards set forth therein. In particular, Section 207(a) requires the payment of overtime compensation at the rate of one and one-half times each employee's regular rate of pay for all hours employees are suffered or permitted to work in excess of 40 hours per week. Defendants have failed to comply with the overtime pay requirements of the FLSA by failing to compensate Plaintiffs and all others similarly situated for work that they have been suffered or permitted to work before the official start time and/or after the end time of their regularly scheduled shifts, as well as during their unpaid meal periods.

42. As a result of Defendants' systemic, continuing, willful and purposeful violations of the FLSA, there has become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs are in the exclusive possession, custody and control of the Defendants and its public agencies and the Plaintiffs are unable to state at this time the exact amount owing to them, but from these records, Plaintiffs will be able to ascertain the precise extent of these violations of the FLSA. Defendants are under a duty imposed by the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs from which the amount of Defendants' liability can be ascertained.

43. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and all others similarly situated are entitled to recover liquidated damages in an amount equal to their back pay damages for the Defendants' failure to pay overtime compensation as alleged herein.

44. Plaintiffs and all others similarly situated are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

**COUNT II**

**FAILURE TO PROPERLY CALCULATE THE REGULAR RATE OF PAY IN  
VIOLATION OF SECTION 7(a) OF THE FLSA, 29 U.S.C. § 207(a)**

45. Plaintiffs hereby incorporate by reference all preceding Paragraphs in their entirety and restate them herein.

46. Section 207(e) of the FLSA, 29 U.S.C. § 207(e), as well as the regulations of the U.S. Department of Labor, 29 CFR Part 778, *et seq.*, require that all forms of remuneration be included in the rate at which FLSA overtime is paid, with some limited exceptions not applicable here. Defendants have failed to include certain premium payments, including night shift differential pay and other recurring pay differentials, in Plaintiffs' regular rate of pay for purposes of computing overtime pay entitlements of Plaintiffs and all others similarly situated, resulting in Defendants paying Plaintiffs and all others similarly situated for overtime work at a rate that is below the rate mandated by the FLSA. Defendants' failure to include these forms of additional compensation in Plaintiffs' regular rate of pay violates section 7(a) of the FLSA. 29 U.S.C. § 207(a); 29 C.F.R. § 778.207(b).

47. As a result of the Defendants' systemic, continuing, willful, and purposeful violations of the FLSA, there have become due and owing to the Plaintiffs and all others similarly situated an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs and all others similarly situated reflecting such ongoing violations are in the exclusive possession, custody and control of Defendants and its public agencies, and Plaintiffs are unable to state at this time the exact amount owing to them, but from these records, Plaintiffs will be able to ascertain the precise extent of these violations of the FLSA. Defendants are under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions

to maintain and preserve payroll and other employment records with respect to Plaintiffs and all others similarly situated from which the amount of Defendants' liability can be ascertained.

48. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and all others similarly situated are entitled to recover liquidated damages in an amount equal to their back pay damages for the Defendants' failure to properly pay overtime compensation as alleged herein.

49. Plaintiffs and all others similarly situated are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

### **COUNT III**

#### **FAILURE TO PAY FLSA OVERTIME IN A TIMELY MANNER BY PAYING FOR OVERTIME WEEKS OR MONTHS AFTER THE OVERTIME WAS WORKED**

50. Plaintiffs hereby incorporate by reference all preceding Paragraphs in their entirety and restate them herein.

51. The FLSA mandates that overtime compensation be paid on the regular payday for the period in which such workweek ends. Overtime payments under the FLSA may not be delayed except as reasonably necessary to compute the amount owed, and in no event shall such payments be delayed beyond the next payday after such computation can be made. 29 C.F.R. § 778.106. Defendants have violated these basic principles by delaying Plaintiffs' overtime payments for working in excess of 40 hours a week by weeks and in some cases months, with such delay not being reasonably necessary to compute Plaintiffs' overtime pay, but rather because of a failure by management personnel to approve overtime payments or due to management withholding such payments until the next budgetary quarter.

52. As this court recently recognized in *Accosta, et al. v. Lorelei Events Grp. Inc., et al.*, No. 7:17-cv-07804-NSR (S.D.N.Y. Jan. 21, 2022), "while 'the Second Circuit has no bright line rule for determining what qualifies as an 'unreasonable' amount of time for an employer to



delay paying its employees,’ several courts have held that it is a violation of the FLSA to withhold employees’ overtime such that ‘two weeks is an unreasonable amount of time for an employer to delay a paycheck.’” (quoting *Coley v. Vannanguard Urban Improvement Ass’n, Inc.*, No. 12-CV-5565 (PKC), 2018 U.S. Dist. LEXIS 50787 (E.D.N.Y. Mar. 29, 2018)). Here, Defendants’ failure to pay Plaintiffs FLSA overtime pay in a timely manner and their withholding of such overtime payments violates section 7(a) of the FLSA. 29 U.S.C. § 207(a); 29 C.F.R. § 778.106.

53. As a result of the Defendants’ systemic, continuing, willful, and purposeful violations of the FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and payroll records for the Plaintiffs are in the exclusive possession, custody and control of Defendants and their public agencies, and Plaintiffs are unable to state at this time the exact amount owing to them, but from these records, Plaintiffs will be able to ascertain the precise extent of these violations of the FLSA. Defendants are under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to Plaintiffs and other employees similarly situated from which the amount of Defendants’ liability can be ascertained.

54. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and all others similarly situated are entitled to recover liquidated damages in an amount equal to their backpay damages for the Defendants’ failure to promptly pay overtime compensation as alleged herein.

55. Plaintiffs and all others similarly situated are entitled to recover attorneys’ fees and costs under 29 U.S.C. § 216(b).

**DEMAND FOR A JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand that their claims be tried before a jury.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs pray that this Court:

- (a) Order a complete and accurate accounting of all the compensation to which the Plaintiffs and those similarly situated are entitled;
- (b) Award Plaintiffs and all others similarly situated monetary liquidated damages equal to their unpaid compensation;
- (c) Award Plaintiffs and all others similarly situated interest on their unpaid compensation;
- (d) Award Plaintiffs and all others similarly situated their reasonable attorneys' fees to be paid by the Defendants, and the costs and disbursements of this action; and
- (e) Grant such other relief as may be just and proper.

Respectfully submitted,

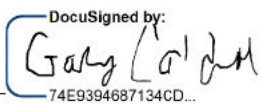
s/ Sara L. Faulman  
Molly A. Elkin\*  
Sara L. Faulman  
Sarah M. Block  
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mae@mnelaborlaw.com  
slf@mnelaborlaw.com  
smb@mnelaborlaw.com  
[ss@mnelaborlaw.com](mailto:ss@mnelaborlaw.com)  
*\*Pro Hac Vice motions forthcoming*

# EXHIBIT A

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Caldwell Gary Alexander  
Last Name First Middle

HOME ADDRESS 26 Whitestone  
Sound Beach NY 11789  
City State Zip Code

SIGNATURE  \_\_\_\_\_  
74E9394687134CD...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Abolade Afuwape Adewole  
Last Name First Middle

HOME ADDRESS 125 Beach 17 St apt 25C  
Far Rockaway NY 11691  
City State Zip Code

SIGNATURE  CED0C3FCF17645C...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME ABRAMSON BARBARA D  
Last Name First Middle

HOME ADDRESS 254-38 74 AVE  
GLEN OAKS NY 11004  
City State Zip Code

SIGNATURE   
15DD02DCFCFB457...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Afolayan Opeyemi Raphael  
Last Name First Middle

HOME ADDRESS 106-14 34 Ave #1  
Corona NY 11368  
City State Zip Code

SIGNATURE   
DA9AAA5F5A6B463...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Akinduti Tunde David  
Last Name First Middle

HOME ADDRESS 486 Bellevue avenue  
Yonkers NY 10703  
City State Zip Code

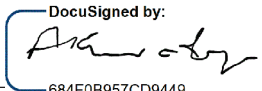
SIGNATURE  \_\_\_\_\_



**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME AKINRODOYE FESTUS A  
Last Name First Middle

HOME ADDRESS 648 E 182 ST  
BRONX NY 10457  
City State Zip Code

SIGNATURE  684F0B957CD9449...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Ali Zimaro N/A  
Last Name First Middle

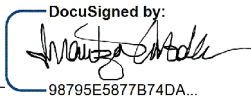
HOME ADDRESS 112 Benson St  
W. Haverstraw NY 10993  
City State Zip Code

SIGNATURE  \_\_\_\_\_

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Arboleda Maritza N/A  
Last Name First Middle

HOME ADDRESS 2 circle drive  
Westbury NY 11590  
City State Zip Code

SIGNATURE  98795E5877B74DA...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Ayala Angel A  
Last Name First Middle

HOME ADDRESS 17-Dock Drive  
Freeport NY 11520  
City State Zip Code

SIGNATURE  34592F4A997943C...



**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Beras Steven N/A  
Last Name First Middle

HOME ADDRESS 681 Route 312  
Brewster Ny 10509  
City State Zip Code

SIGNATURE  760DC4C5A13D4F9...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Berolatti Michael J  
Last Name First Middle

HOME ADDRESS 59 Inverness Rd  
New Rochelle NY 10804  
City State Zip Code

SIGNATURE  C5744591C9BD4C2...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Blake Richard Aston  
Last Name First Middle

HOME ADDRESS 379 east 51 street  
Brooklyn NY 11203  
City State Zip Code

SIGNATURE  \_\_\_\_\_



**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Boni Richard N/A  
Last Name First Middle

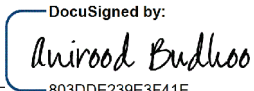
HOME ADDRESS 17 Pheasant Lane  
Staten Island NY 10309  
City State Zip Code

SIGNATURE  597D0B96D0994E3...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Budhoo Anirood Ramchan  
Last Name First Middle


HOME ADDRESS 146-07 115 Avenue  
Jamaica NY 11436  
City State Zip Code

SIGNATURE   
803DDE239E3F41E...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Chin Michael nmn  
Last Name First Middle

HOME ADDRESS 45-33 217th Street  
Bayside NY 11361  
City State Zip Code

SIGNATURE  552C0D1ADC0C447...



**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME cobaj Iir n/a  
Last Name First Middle

HOME ADDRESS 41 Florence street  
staten island ny 10308  
City State Zip Code

SIGNATURE  5241A5B826594FA...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME CREARY CHRISTOPHER LAWSON  
Last Name First Middle

HOME ADDRESS 167-17 FOCH BLVD  
JAMAICA NY 11434  
City State Zip Code

SIGNATURE   
C490B174E9064C0...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Crescenzo Dominick Anthony  
Last Name First Middle

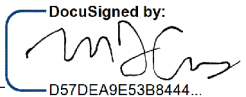
HOME ADDRESS 119 Lincoln road  
Franklin Square Ny 11010  
City State Zip Code

SIGNATURE  \_\_\_\_\_

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Cruz Michael Jason  
Last Name First Middle

HOME ADDRESS 9309 3rd avenue Apt 2F  
Brooklyn NY 11209  
City State Zip Code

SIGNATURE  \_\_\_\_\_



**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Daly John Vincent  
Last Name First Middle

HOME ADDRESS 86-21 Eliot Avenue  
Queens NY 11374  
City State Zip Code

SIGNATURE   
62D7817EE2A5490...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Evelyn Ronald Theophilus  
Last Name First Middle

HOME ADDRESS 190-09 Quencer Road  
Queens NY 11412  
City State Zip Code

SIGNATURE  79ECBCAE77E2413...

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Fantauzzi Robert Louis  
Last Name First Middle

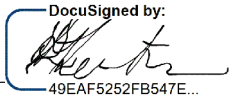
HOME ADDRESS 32-14 203rd Street  
Bayside Ny 11361  
City State Zip Code

SIGNATURE  \_\_\_\_\_

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Featherstone Shaun Luther  
Last Name First Middle

HOME ADDRESS 227 Macon Street  
Brooklyn NY 11216  
City State Zip Code

SIGNATURE  \_\_\_\_\_

**I hereby consent to become a party plaintiff in an action against the City of New York to recover overtime wages and other relief under the Fair Labor Standards Act.**

NAME Flores George F  
Last Name First Middle

HOME ADDRESS 155-26 79 st  
queens ny 11414  
City State Zip Code

SIGNATURE  8AE1A43B39B141C...