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

JAMIE MARTIN and DANEISHA SINGLETON on behalf of themselves and all others similarly situated, and the Proposed New York Rule 23 Class, Plaintiffs, vs. ASSURANCE WIRELESS, LLC and WALLACE MORGAN, INC., Defendants.	Case No. _____ **CLASS ACTION COLLECTIVE ACTION COMPLAINT (JURY TRIAL DEMANDED)**

Plaintiffs Jamie Martin and Daneisha Singleton ("Plaintiffs"), on behalf of themselves and all others similarly situated, and on behalf of the members of the proposed New York Rule 23 Class, by and through their attorneys, for their Complaint against Defendants Assurance Wireless, LLC, and Wallace Morgan, Inc., allege as follows:

PRELIMINARY STATEMENT

1. This case is about Defendant Assurance Wireless, LLC ("Assurance Wireless") and the companies with which it contracts and partners—such as Defendant Wallace Morgan, Inc. ("Wallace Morgan")—willfully misclassifying their employees as "independent contractors," failing to pay their employees at least the minimum wage for all hours worked, and failing to pay their employees any overtime compensation for hours worked over forty in each work week. Plaintiffs Jamie Martin and Daneisha Singleton are two such employees.

2. Accordingly, Plaintiffs, on behalf of themselves and other similarly situated current and former employees of Assurance Wireless and its partners, including Wallace Morgan, bring this: (1) Nationwide Collective Action against Assurance Wireless and Wallace

Morgan under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et. seq.* ("FLSA") for failure to pay a minimum wages and overtime; and (2) New York Rule 23 Class Action against Assurance and Wallace Morgan under the N.Y. Lab. Laws § 650, *et. seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Pt. 142, for failure to pay minimum wages and overtime.

3. Defendants have willfully engaged in a pattern, policy, and practice of unlawful conduct for the actions alleged in this Complaint, in violation of the federal and state rights of the Plaintiffs, the Nationwide FLSA Collective, and members of the proposed New York Rule 23 Class.

THE PARTIES

I. PLAINTIFFS

4. Plaintiff Jamie Martin ("Martin") is an adult individual who is a resident of New York.

5. Plaintiff Martin has consented in writing to be a party to the FLSA claims in this action pursuant to 29 U.S.C. § 216(b). Her consent form is attached hereto as Exhibit A.

6. Plaintiff Martin worked as an "account executive" for Defendants from approximately March 29, 2015 through mid-April 2015, and as a "corporate trainer" for Defendants from approximately mid-April 2015 through May 7, 2015.

7. Plaintiff Daneisha Singleton ("Singleton") is an adult individual who is a resident of New York.

8. Plaintiff Singleton has consented in writing to be a party to the FLSA claims in this action pursuant to 29 U.S.C. § 216(b). Her consent form is attached hereto as Exhibit B.

9. Plaintiff Singleton worked as an "account executive" for Defendants from approximately April 3, 2015 through mid-April 2015, and as a "corporate trainer" for Defendants from approximately mid-April 2015 through May 7, 2015.

10. As detailed below, Plaintiffs Martin, Singleton, and members of the Nationwide FLSA Collective defined below are current and former employees of Assurance Wireless within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

11. As detailed below, Plaintiffs Martin, Singleton, and members of the proposed New York Rule 23 Class defined below are current and former employees of Assurance Wireless within the meaning of N.Y. Lab. Laws § 651(5).

12. As detailed below, Plaintiffs Martin, Singleton, and members of the Wallace Morgan Rule 23 Subclass defined below are current and former employees of Assurance Wireless and Wallace Morgan within the meaning of N.Y. Lab. Laws § 651(5) and the FLSA, 29 U.S.C. § 203(e)(1). All references to the New York Rule 23 class herein, by definition, apply to the Wallace Morgan Rule 23 Subclass, unless otherwise indicated.

II. DEFENDANTS

13. Defendant Assurance Wireless, LLC is a foreign corporation that does business in New York and in this District.

14. Defendant Assurance Wireless, LLC is a foreign corporation headquartered in New Jersey.

15. Defendant Assurance Wireless, LLC is a wholly owned subsidiary of Virgin Mobile USA, L.P., which, in turn, is an indirect and wholly owned subsidiary of the Sprint Corporation.

16. Defendant Wallace Morgan, Inc. is a domestic corporation, with its headquarters in New York, New York.

17. Defendants operate in interstate commerce by, among other things, providing wireless phone and promotional services, including in New York.

18. Defendants' gross annual sales made or business done have been $500,000 or greater during each year within the applicable time period.

19. As detailed below, Defendant Assurance Wireless is or was the employer of Plaintiffs, the Nationwide FLSA Collective and the proposed New York Rule 23 Class under the FLSA, 29 U.S.C. § 201, *et. seq.*, and New York Labor Law ("NYLL"), § 650, *et. seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Pt. 142. Defendant Assurance Wireless employed these people at all times relevant to the Complaint.

20. As detailed below, Defendant Wallace Morgan is or was the employer of Plaintiffs and the Wallace Morgan Rule 23 Subclass, as defined below, under the FLSA, 29 U.S.C. § 201, *et. seq.*, and NYLL, § 650, *et. seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Pt. 142. Defendant Wallace Morgan employed these people at all times relevant to the Complaint.

21. The minimum wage and overtime provisions of the NYLL, § 650, *et. seq.* and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Pt. 142, apply to Defendants and protect the Class Representatives and members of the proposed New York Rule 23 Class because, for reasons set forth herein, Defendants constitute employers under New York's minimum wage and overtime laws and Plaintiffs constitute employees.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

23. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question, 29 U.S.C. § 216(b).

24. Venue in the Southern District of New York is proper pursuant to 28 U.S.C. § 1391 because Defendant Wallace Morgan resides in this District and Defendant Assurance Wireless is subject to personal jurisdiction in this District.

25. Venue in the Southern District of New York is also proper because a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of New York.

FACTUAL ALLEGATIONS

I. FACTS RELATED TO ASSURANCE WIRELESS AND THE LIFELINE ASSISTANCE PROGRAM

26. Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

27. Assurance Wireless is in the business of providing wireless phones and wireless phone service to consumers.

28. Assurance Wireless holds itself out as a provider of the federal Lifeline Assistance Program and its primary purpose is to facilitate the enrollees into the program and provide them with free wireless phones and phone service. In fact, Assurance Wireless's customers are all enrollees in the Lifeline Assistance Program. *See generally* Lifeline Program

Description, http://www.assurancewireless.com/Public/MorePrograms.aspx (last accessed June 29, 2015).

29. To explain, the Lifeline Assistance Program was created by Congress in the 1980s to provide phone service to qualifying low-income consumers. The program was meant to ensure that low-income consumers have access to phone service. The program is funded through the Congressionally-created Universal Service Fund, which in turn is funded by contributions from telecommunication providers. In 2005, the program was extended to offer wireless service and phones to low-income consumers, in addition to traditional landlines. These wireless phones are colloquially referred to as "Obama Phones."

30. Private telecommunication companies can be eligible to provide Lifeline services. For each enrollee/subscriber to the Lifeline program, the telecommunication company providing the service receives a monthly subsidy of $9.25 paid from the Universal Service Fund. The $9.25 amount of the subsidy is set by regulation. 47 C.F.R. § 54.403(a)(1).

31. Telecommunication companies who provide Lifeline services are required by regulation to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." 47 C.F.R. § 54.405(b). The regulation does not further specify or dictate how services are to be publicized or offered.

32. Through Virgin Mobile USA, L.P., Assurance Wireless is one such telecommunication company that provides Lifeline services.

33. Once enrolled with Assurance Wireless and provided they remain eligible for the Lifeline Program, consumers receive a free wireless phone and a preset amount of free talk minutes and text messages.

34. Consumers who are enrolled with Assurance Wireless and who remain eligible for the Lifeline Program, have the option of purchasing monthly add-ons, such as additional minutes and texts.

35. In order to enroll consumers in the first instance, however, Assurance Wireless contracts and partners with other companies around the nation ("Assurance Partners"), including Wallace Morgan, to gather applications from consumers who wish to enroll in the Lifeline Program through Assurance Wireless. *See Become an Assurance Wireless Partner*, http://assurancewireless.virginmobileusa.com/become-a-partner/ (last accessed June 29, 2015).

36. Assurance Partners are located in over forty states and service thousands of consumers, together with Assurance Wireless. *See id*.

37. Wallace Morgan, one such Assurance Partner, is located in New York, New York, and holds itself out as an "events and promotions firm," that prides itself on "brand loyalty" for its clients, such as Assurance Wireless. *See* www.wallacemorgan.com (last accessed June 29, 2015).

38. In fact, it is Assurance Wireless's name and not Wallace Morgan or any other Assurance Partners' name that appears on promotional material for the Assurance Wireless's provision of Lifeline services.

39. Moreover, many of the promotional materials used direct consumers to Assurance Wireless's website and customer care number for further information and not to that of Assurance Partners.

40. Assurance Partners can pool resources to fulfill their obligations to Assurance Wireless. For example, Assurance Partners can and do share office space.

41. As discussed further herein, Wallace Morgan and Assurance Partner Cromex, Inc.

both maintain offices at 40 Exchange Place, Suite 600 in New York.

II. FACTS RELATED TO ASSURANCE WIRELESS'S EMPLOYMENT AND MISCLASSIFICATION OF WORKERS AS INDEPENDENT CONTRACTORS

42. Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

43. Assurance Partners, including Wallace Morgan, directly hire workers whose primary job duty is to gather applications from consumers for possible enrollment in the Lifeline Program through Assurance Wireless. Assurance Wireless, together with an Assurance Partner, jointly employs these workers.

44. Plaintiffs are two such employees; Assurance Wireless and Wallace Morgan jointly employ Plaintiffs.

45. Plaintiffs worked for Assurance Wireless as "account executives" and "corporate trainers." Despite these and similar titles, Plaintiffs, the Nationwide FLSA Collective, and New York Rule 23 Class worked in entry-level, low skill jobs.

46. In fact, Assurance Wireless has no requirement that those gathering applications on its behalf be skilled workers, have previous experience in sales or promotions, or have executive or training experience of any kind.

47. Once hired as an account executive, corporate trainer, or similar title (collectively "agents"), agents are required to undergo training through an online interface with Assurance Wireless.

48. Additionally, once hired, agents are given an identification badge bearing the name of Assurance Wireless, printed in the font used by Assurance Wireless for its logo. *Compare* Exhibit C with www.assurancewireless.com (last accessed June 29, 2015). Agents are

required to wear this badge during the course of performing their job duties.

49. In order to get consumers to submit applications for enrollment, agents are sent by Wallace Morgan and Assurance to certain locations to talk about the free wireless phone program with consumers and help them fill out applications. Among other things, agents are given preprinted "Assurance Wireless Talking Points" to go over with consumers, *see* Exhibit D, as well as informational Assurance pamphlets, *see* Exhibit E, and marketing paraphernalia. Assurance Wireless makes these materials available for its agents.

50. In fact, Assurance Wireless provides its partners with "[a] dedicated marketing team and customizable tools for marketing outreach." *See* http://assurancewireless.virginmobileusa.com/become-a-partner/ (last accessed July 1, 2015 and screenshot attached hereto as Exhibit F).

51. Assurance Wireless does not allow its agents the discretion to change the services or phones offered.

52. While Assurance Wireless could charge for the phones and services described above, it does not nor does it allow its agents to charge consumers for the phones or services described above.

53. Further still, Assurance Wireless does not let its agents actually enroll consumers in the Lifeline Program. Rather, agents are to simply get consumers to fill out an application on a company-issued electronic tablet. The application is then submitted to Assurance Wireless, who makes the determination of whether to enroll the consumer and provide her a free phone.

54. Agents are trained on Assurance Wireless' application forms.

55. Among other things, the application forms direct applicants to contact Assurance Wireless if factors contributing to their eligibility in the Lifeline Program change. In fact,

information regarding Assurance Partners is not provided on the application materials.

56. For each application gathered by an agent that results in the consumer being enrolled in the program, the agent receives a preset amount of money. *See* Exhibit G. Plaintiffs received $10 per enrollee. Agents cannot and do not negotiate this amount with Assurance Wireless despite the fact that Assurance Wireless appears on the agents' statements of pay. *See id.*

57. Only after enrollment do consumers have the option of purchasing monthly add-ons; those add-ons are not sold by the agents.

58. Despite the foregoing, Assurance Wireless classifies all of its agents as "independent contractors."

59. In reality, all the agents are employees under the FLSA and NYLL.

III. FACTS RELATED TO WALLACE MORGAN'S EMPLOYMENT AND MISCLASIFICATION OF WORKERS AS INDEPENDENT CONTRACTORS

60. Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

61. Wallace Morgan jointly employs agents with Assurance Wireless. Plaintiffs are such employees, as are members of the Wallace Morgan Rule 23 Subclass defined herein.

62. Wallace Morgan has no requirement that agents be skilled workers, have previous experience in sales or promotions, or have executive or training experience of any kind.

63. In addition to the training described above, agents are required to undergo training in person at the offices of Wallace Morgan and Cromex, Inc.

64. Agents employed by Wallace Morgan and Cromex, Inc. are required to train together and attend the morning meetings discussed below together.

65. Agents have set schedules at Wallace Morgan, which are typically 11-12 hours, 5-6 days per week.

66. Agents have no discretion to alter their basic format of their schedule or work day.

67. Plaintiff Martin's and Singleton's schedules were 8 a.m. to 7 p.m., 5 days per week as an "account executive" and 7:30 a.m. to 7:30 p.m., 6 days per week as a "corporate trainer."

68. Agents are required to sign in at the front desk at Wallace Morgan when they report to work.

69. Agents then change in the changing room provided onsite at the Wallace Morgan and Cromex offices.

70. Agents are next required to attend morning meetings together with Wallace Morgan management, where information regarding boosting application rates is discussed.

71. After morning meetings, agents are sent to geographic locations in the area ("territories") to solicit consumers for enrollment in Lifeline through Assurance Wireless.

72. While some territories are better for finding potential consumers given demographics and the like, agents have no say over which territory they are assigned to. Rather, those decisions are made by management at Wallace Morgan.

73. For example, when Plaintiff Martin asked to be assigned to Staten Island, her manager at Wallace Morgan (Stewart) told her no.

74. For each application gathered by an agent that results in Assurance enrolling the consumer in the program, the agent receives $10. *See* Exhibit G. Agents cannot and do not negotiate this amount with Wallace Morgan, who issues their paychecks. *See id.*

75. Agents are required to report back to the office at 6:30 p.m.

76. Once back at the office, agents report to Wallace Morgan management on the number of applications gathered; management assesses each agent's day, recognizing top performers; and management, at its discretion, holds one-on-one meetings with agents to discuss performance.

77. After evening meetings with management conclude, agents are required to sign out at the front desk before they may leave for the day.

78. This daily schedule is specified in the handbook that Wallace Morgan distributes to account executives.

79. Corporate trainers follow the same schedule; however, they additionally interview and train account executives at the direction of Wallace Morgan.

80. Among other things, the handbook for account executives lists office policies, such as:

a. "No eating or drinking around the office"

b. "Cell phones should be silenced"

c. "No leaning on walls and surfaces"

d. "strictly professional dress"

e. "It may go without saying but tardiness will not be accepted and repeat offending will progress from a warning, followed by being sent home for the day to finally being asked to leave the business altogether."

f. "No show and no call means no job unless a dire emergency arises. If you are ill then attend for morning training and announcements, after which the day can be taken for recuperation. If illness makes your attendance impossible then a doctor's

notes should be brought."

81. Wallace Morgan enforces these policies as to account executives, corporate trainers, and other agents alike.

82. Similarly, Wallace Morgan distributes a handbook to corporate trainers, which, among other things, directs them to work Saturdays, be on time, and provides instruction on working with account managers and interviewing.

83. Despite the foregoing, Wallace Morgan classifies all of its agents as "independent contractors."

84. In reality, all the agents are employees under the FLSA and NYLL.

IV. FACTS RELATED TO DEFENDANTS' ILLEGAL PAY SCHEME AND WILLFUL VIOLATIONS OF THE LAW

85. Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

86. Aside from the $10 per approved application, agents do not receive any compensation for their work for Assurance Wireless or Wallace Morgan.

87. As a result, there were times when agents did not make at least the minimum wage for all hours worked within a work week.

88. In fact, Defendants routinely required Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class, to work without payment of the minimum wage for all hours worked within a work week.

89. Similarly, Defendants routinely required Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class, to work long hours in excess of forty hours per week to complete all their job responsibilities.

90. On these occasions, Defendants did not compensate the agents with payment of one and one-half times their regular rate for all hours over forty worked within a work week.

91. For example, during her first week of work, Plaintiff Martin worked approximately 55 hours and was paid $180. *See* Exhibit G. In other words, she was paid $3.27 per hour and earned no overtime compensation despite working 15 hours over 40 that week.

92. Defendants are in possession of the pay and time records necessary to perform these calculations for the remainder of Plaintiff Martin's employment and for Plaintiff Singleton, the Nationwide FLSA Collective, and the New York Rule 23 Class, which includes the Wallace Morgan Rule 23 Subclass.

93. This illegal pay scheme violates the FLSA and NYLL, which require that employees be paid at least the minimum wage for all hours worked and that they be paid at a rate of not less than one and one-half times the regular rate of pay, for work performed in excess of forty (40) hours per workweek.

94. In short, Defendants did not pay Plaintiffs Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class all minimum wage and overtime compensation owed.

95. Defendants failed to furnish Plaintiffs Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class with annual wage notice and an accurate statement of wages, hours worked, rates paid, and gross wages in violation of the NYLL.

96. Defendants operated under a common scheme to deprive these agents of overtime compensation and minimum wage by misclassifying them independent contractors.

97. Defendants were, or should have been, aware that Plaintiffs Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class performed work that required payment of overtime compensation and minimum wage.

98. Among other things, both Defendants are sophisticated companies that do business in New York and around the country and have access to counsel.

99. Defendant Assurance Wireless is part of the Sprint Network, which has been sued for wage and hour violations in the past.

100. Additionally, both the FLSA and New York Labor Law have been in effect for decades, allowing more than ample time for Defendants to come into compliance.

101. Further, both Defendants hold agents out as their own and knowingly impose rules and requirements on them that exceed that typical of contracting relationships.

102. Defendants were aware of the hours worked by Plaintiffs Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class because Defendants kept sign-in and out records of when each employee worked, enforced the schedule discussed above, and imposed discipline on those who did not work the required hours.

103. Additionally, Defendant Assurance Wireless is in contact with Wallace Morgan and other Assurance Partners and is aware of how many applications are gathered by their agents.

104. Defendants observed Plaintiffs Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class working overtime hours to comply with company policy.

105. Defendants' conduct as alleged in this Complaint was willful and in bad faith.

NATIONWIDE FLSA COLLECTIVE ALLEGATIONS

106. Plaintiffs Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

107. Plaintiffs Martin and Singleton bring the First and Second Claims for Relief on behalf of: "all persons who worked as account executives, corporate trainers, or similar titles and whose job was to gather applications for enrollment in the Lifeline Program through Assurance Wireless at any time three years prior to the filing of this Complaint through the date the notice is mailed."

108. Plaintiffs Martin and Singleton and the Nationwide FLSA Collective are victims of Defendants' widespread, repeated, and consistent illegal policies that have resulted in violations of their rights under the FLSA, 29 U.S.C. § 201 *et. seq.*, and that have caused significant damage to Plaintiffs Martin, Singleton and the Nationwide FLSA Collective.

109. Defendants have willfully engaged in a pattern of violating the FLSA, 29 U.S.C. § 201 *et. seq.* as described in this Complaint in ways including, but not limited to, failing to pay employees a minimum wage and overtime compensation

110. Defendants' conduct constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

111. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs Martin and Singleton and the Nationwide FLSA Collective, and, as such, notice should be send to the Nationwide FLSA Collective. There are numerous similarly situated current and former employees of Defendants who have suffered from the common policies and plans of Defendants, including being denied a minimum wage and overtime compensation, and who

would benefit from the issuance of a Court supervised notice of the present lawsuit and the opportunity to join in the present lawsuit. Those similarly situated employees are known to Defendants and are readily identifiable through Defendants' records.

NEW YORK RULE 23 CLASS ALLEGATIONS

112. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

113. Class Representatives bring the remaining Claims for Relief on behalf of themselves and as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The New York Rule 23 Class is defined as: "all persons who worked in the state of New York as account executives, corporate trainers, or similar titles and whose job was to gather applications for enrollment in the Lifeline Program through Assurance Wireless at any time six years prior to the filing of this Complaint through the date the notice is mailed."

114. The Wallace Morgan Subclass is defined as: "all New York Ryle 23 Class Members who were directly hired by Wallace Morgan."

115. The persons in the New York Rule 23 Class are so numerous that joinder of all members of the New York Rule 23 Class is impracticable. While the precise number of class members has not been determined at this time, Defendants have employed in excess of two hundred (200) individuals as agents during the applicable statute of limitations. The Class Representatives and members of the New York Rule 23 Class have been equally affected by Defendants' violations of law.

116. There are questions of law and fact common to the New York Rule 23 Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

a. Whether the Defendants properly classified the Class Representatives and members of the New York Rule 23 Class as independent contractors under N.Y. Lab. Laws § 650, *et. seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Pt. 142;

b. Whether the Defendants failed to pay the Class Representatives and members of the New York Rule 23 Class a minimum wage in violation of N.Y. Lab. Laws § 650, *et. seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Pt. 142;

c. Whether the Defendants failed to pay the Class Representatives and members of the New York Rule 23 Class overtime compensation in violation of N.Y. Lab. Laws § 650, *et. seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Pt. 142;

d. Whether Defendants failed to furnish the Class Representatives and the members of the New York Rule 23 Class with wage notices in violation of the N.Y. Lab. Laws Article 6, §195(1), and the supporting New York State Department of Labor Regulations;

e. Whether Defendants failed to furnish Class Representatives and the Rule 23 Class with accurate statements of wages, hours worked, rates paid, and gross wages, in violation of the N.Y. Lab. Laws Article 6, §195(3), and the supporting New York State Department of Labor Regulations;

f. Whether the Defendants' foregoing conduct constitutes a willful violation of N.Y. Lab. Laws § 650, *et. seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Pt. 142; and

g. The proper measure of damages sustained by the New York Rule 23 Class.

117. The Class Representatives' claims are typical of those of the members of the New York Rule 23 Class. The Class Representatives, like the other members of the New York Rule

23 Class, were subjected to Defendants' policies and willful practices of refusing to pay a minimum wage and overtime. The Class Representatives and members of the New York Rule 23 Class have sustained similar injuries as a result of the Defendants' actions.

118. The Class Representatives will fairly and adequately protect the interests of the New York Rule 23 Class. The Class Representatives have retained counsel experienced in complex wage and hour class and collective action litigation. There are no conflicts between the Class representatives and the class they seek to represent.

119. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because questions of law or fact predominate over any questions affecting individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this controversy because in the context of wage and hour litigation, individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against large corporate defendants. Class litigation is also superior because it will preclude the need for unduly duplicative litigation resulting in inconsistent judgments pertaining to the Defendants' policies. There do not appear to be any difficulties in managing this class action.

120. The Class Representatives intend to send notice to all members of the New York Rule 23 Class to the extent required by Fed. R. Civ. P. 23.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF–MINIMUM WAGE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201, *ET. SEQ.* *ON BEHALF OF PLAINTIFFS MARTIN AND SINGLETON AND THE NATIONWIDE FLSA COLLECTIVE CLASS*

121. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

122. This claim arises from Defendants' willful violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*, for failure to pay a minimum wage to Plaintiffs Martin and Singleton and members of the Nationwide FLSA Collective to which they were entitled.

123. At all times relevant, Defendants have been, and continue 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. § 201, *et. seq.*

124. The minimum wage provisions of the FLSA, 29 U.S.C. § 201, *et. seq.*, apply to Defendants and protect Plaintiffs and the Nationwide FLSA Collective.

125. Plaintiffs have consented in writing to be a part of this action, pursuant to 29 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign consent forms and join as plaintiffs.

126. Pursuant to the FLSA, 29 U.S.C. § 206, Plaintiffs and the Nationwide FLSA Collective Plaintiffs were entitled to be compensated at a rate $7.25 per hour at all applicable times.

127. Defendants, pursuant to their policies and practices, refused and failed to pay a minimum wage to Plaintiffs and the Nationwide FLSA Collective.

128. By failing to compensate Plaintiffs and the Nationwide FLSA Collective, Defendants violated, and continue to violate, their statutory rights under FLSA, 29 U.S.C. § 206.

129. The forgoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255, without a good faith or reasonable basis.

130. Plaintiffs on behalf of themselves and the Nationwide FLSA Collective, seek damages in the amount of their respective unpaid wages, liquidated damages as provided under the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems proper.

131. Plaintiffs, on behalf of themselves and the Nationwide FLSA Collective, seek recovery of attorney's fees and costs to be paid by Defendants as provided by the FLSA, 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF-OVERTIME COMPENSATION
FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201, *ET. SEQ.*
ON BEHALF OF PLAINTIFFS MARTIN AND SINGLETON AND THE NATIONWIDE FLSA COLLECTIVE CLASS

132. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

133. This claim arises from Defendants' willful violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*, for failure to pay overtime compensation to Plaintiffs Martin and Singleton and members of the Nationwide FLSA Collective to which they were entitled.

134. At all times relevant, Defendants have been, and continue 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. § 201, *et. seq.*

135. The minimum wage provisions of the FLSA, 29 U.S.C. § 201, *et. seq.*, apply to Defendants and protect Plaintiffs and the Nationwide FLSA Collective.

136. Plaintiffs have consented in writing to be a part of this action, pursuant to 29 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign consent forms and join as plaintiffs.

137. Pursuant to the FLSA, 29 U.S.C. § 207, Plaintiffs and the Nationwide FLSA Collective Plaintiffs were entitled to be compensated at a rate of at least one-and-one-half times the minimum wage of $7.25 for all hours worked over forty in one work week.

138. Defendants, pursuant to their policies and practices, refused and failed to pay overtime wages to Plaintiffs and the Nationwide FLSA Collective.

139. By failing to compensate Plaintiffs and the Nationwide FLSA Collective, Defendants violated, and continue to violate, their statutory rights under FLSA, 29 U.S.C. § 207.

140. The forgoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255, without a good faith or reasonable basis.

141. Plaintiffs on behalf of themselves and the Nationwide FLSA Collective, seek damages in the amount of their respective unpaid wages, liquidated damages as provided under the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems proper.

142. Plaintiffs, on behalf of themselves and the Nationwide FLSA Collective, seek recovery of attorney's fees and costs to be paid by Defendants as provided by the FLSA, 29 U.S.C. § 216(b).

THIRD CLAIM FOR RELIEF - MINIMUM WAGES NEW YORK LABOR LAWS, § 650, *ET. SEQ.* AND THE SUPPORTING NEW YORK STATE DEPARTMENT OF LABOR REGULATIONS, N.Y. COMP. CODES R. & REGS. TIT. 12, PT. 142, *ET. SEQ.*
ON BEHALF OF CLASS REPRESENTATIVES MARTIN AND SINGLETON AND MEMBERS OF THE NEW YORK RULE 23 CLASS

143. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

144. This claim arises from Defendants' willful violation of the New York Labor Law, § 650, et seq. and the applicable regulations, 12 N.Y.C.R.R. Part 142, for failure to pay a minimum wage to Plaintiffs Martin and Singleton and members of the New York Rule 23 Class to which they were entitled.

145. At all times relevant, Defendants have been, and continue to be, an "employer" engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the NYLL.

146. The minimum wage provisions of the NYLL apply to Defendants and protect Plaintiffs and the New York Rule 23 Class.

147. Pursuant to the NYLL, Plaintiffs and the New York Rule 23 Class were entitled to be compensated at a rate of at least $7.15 per hour through July 23, 2009, at least $7.25 per hour from July 24, 2009 to December 30, 2013, $8.00 per hour between December 31, 2013 and December 30, 2014, and $8.75 from December 31, 2014 to the present.

148. Defendants, pursuant to their policies and practices, refused and failed to pay a minimum wage to Plaintiffs and the New York Rule 23 Class.

149. By failing to compensate Plaintiffs and the New York Rule 23 Class, Defendants violated, and continue to violate, their statutory rights under NYLL.

150. The forgoing conduct, as alleged, constitutes a willful violation of the NYLL without a good faith or reasonable basis.

151. Plaintiffs on behalf of themselves and the New York Rule 23 Class, seek damages in the amount of their respective unpaid wages, liquidated damages as provided under the NYLL, interest, and such other legal and equitable relief as the Court deems proper.

152. Plaintiffs, on behalf of themselves and the New York Rule 23 Class, seek recovery of attorney's fees and costs to be paid by Defendants as provided by the NYLL.

FOURTH CLAIM FOR RELIEF – OVERTIME COMPENSATION NEW YORK LABOR LAWS, § 650, *ET. SEQ.* AND THE SUPPORTING NEW YORK STATE DEPARTMENT OF LABOR REGULATIONS, N.Y. COMP. CODES R. & REGS. TIT. 12, PT. 142, *ET. SEQ.*
ON BEHALF OF CLASS REPRESENTATIVES MARTIN AND SINGLETON AND MEMBERS OF THE NEW YORK RULE 23 CLASS

153. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

154. This claim arises from Defendants' willful violation of the New York Labor Law, § 650, et seq. and the applicable regulations, 12 N.Y.C.R.R. Part 142, for failure to pay overtime compensation to Plaintiffs Martin and Singleton and members of the New York Rule 23 Class to which they were entitled.

155. At all times relevant, Defendants have been, and continue to be, an "employer" engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the NYLL.

156. The overtime provisions of the NYLL apply to Defendants and protect Plaintiffs and the New York Rule 23 Class.

157. Pursuant to the NYLL, Plaintiffs and the New York Rule 23 Class were entitled to be compensated at a rate of at least one-and one-half the minimum wage for all hours worked over forty in a work week.

158. Defendants, pursuant to their policies and practices, refused and failed to pay overtime compensation to Plaintiffs and the New York Rule 23 Class.

159. By failing to compensate Plaintiffs and the New York Rule 23 Class, Defendants violated, and continue to violate, their statutory rights under NYLL.

160. The forgoing conduct, as alleged, constitutes a willful violation of the NYLL without a good faith or reasonable basis.

161. Plaintiffs on behalf of themselves and the New York Rule 23 Class, seek damages in the amount of their respective unpaid wages, liquidated damages as provided under the NYLL, interest, and such other legal and equitable relief as the Court deems proper.

162. Plaintiffs, on behalf of themselves and the New York Rule 23 Class, seek recovery of attorney's fees and costs to be paid by Defendants as provided by the NYLL.

FIFTH CLAIM FOR RELIEF – WAGE NOTICES
NEW YORK LABOR LAWS, ARTICLE 6, § 195(1) AND THE SUPPORTING NEW YORK STATE DEPARTMENT OF LABOR REGULATIONS
ON BEHALF OF CLASS REPRESENTATIVES MARTIN AND SINGLETON AND MEMBERS OF THE NEW YORK RULE 23 CLASS

163. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

164. Defendants have willfully failed to supply Plaintiffs and the New York Rule 23 Class with wage notices, as required by NYLL, Article 6, § 195(1), in English or in the language identified by Plaintiffs and the members of the New York Rule 23 Class as their primary

language, containing Plaintiffs' and the members of the New York Rule 23 Class' rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

165. Through their knowing or intentional failure to provide Plaintiffs and the New York Rule 23 Class with the wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

166. Due to Defendants' willful violations of NYLL, Article 6, § 195(1), Plaintiffs and the New York Rule 23 Class are entitled to statutory penalties of fifty dollars each day that Defendants failed to provide Plaintiffs and the members of the New York Rule 23 Class with wage notices, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-b).

SIXTH CLAIM FOR RELIEF – WAGE NOTICES
NEW YORK LABOR LAWS, ARTICLE 6, § 195(3) AND THE SUPPORTING NEW YORK STATE DEPARTMENT OF LABOR REGULATIONS
ON BEHALF OF CLASS REPRESENTATIVES MARTIN AND SINGLETON AND MEMBERS OF THE NEW YORK RULE 23 CLASS

167. Plaintiffs and Proposed Class Representatives Martin and Singleton, on behalf of themselves, the Nationwide FLSA Collective, and the New York Rule 23 Class re-allege and incorporate by reference the above paragraphs as set forth herein.

168. Defendants have willfully failed to supply Plaintiffs and the New York Rule 23 Class with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

169. Through their knowing or intentional failure to provide Plaintiffs and the New York Rule 23 Class with the accurate wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

170. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs and the members of the New York Rule 23 Class are entitled to statutory penalties of two hundred fifty dollars for each workweek that Defendants failed to provide Plaintiffs and the members of the New York Rule 23 Class with accurate wage statements, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Martin and Singleton, on behalf of themselves and the Nationwide FLSA Collective, pray for judgment against Defendants as follows:

a. Designation of this action as a collective action on behalf of the Nationwide FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the Nationwide FLSA Collective apprising them of the pendency of this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);

b. That Plaintiffs and the Nationwide FLSA Collective be determined and adjudicated as "employees" under the FLSA;

c. That the practices of Defendants be determined and adjudicated as violations of the FLSA, 29 U.S.C. § 201, *et. seq.*;

d. That the practices of Defendants constitute willful violations of the FLSA, 29 U.S.C. § 201, *et. seq.*;

e. Judgment against Defendants for an amount equal to Plaintiffs and the Nationwide FLSA Collective's unpaid wages pursuant to the FLSA, 29 U.S.C. § 201, *et. seq.*;

f. Judgment against Defendants for an amount equal as liquidated damages pursuant to the FLSA, 29 U.S.C. § 201, *et. seq.*;

g. An award of interest, costs, and attorney's fees, and all other relief available under the FLSA, 29 U.S.C. § 201, *et. seq.*;

h. Leave to add additional plaintiffs or claims by motion, the filing of written consent forms, or any other method approved by the Court; and

i. For such further relief as the Court deems just and equitable.

WHEREFORE, Class Representatives Martin and Singleton, on behalf of themselves and all members of the New York Rule 23 Class, pray for judgment against Defendants as follows:

a. For Certification of this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of the New York Rule 23 Class and appoint Class Representatives and their counsel to represent the class;

b. That Class Representatives and members of the New York Rule 23 Class be determined and adjudicated as "employees" under relevant state law;

c. That the practices of Defendants be determined and adjudicated to be violations of the relevant state law;

d. Judgment against Defendants for amounts rightly owed to Plaintiffs and the Class and for liquidated damages as authorized by statute;

e. All costs and reasonable attorney's fees incurred in prosecuting this claim to the extent allowed by law;

f. Interest;

g. Leave to amend this Complaint to add relevant claims and plaintiffs; and

h. For such further legal and equitable relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the Plaintiffs, similarly situated individuals, and members of the New York Rule 23 Class demand a trial by jury.

Dated: July 7, 2015

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