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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ AUG 24 2009 ★

RICHARD RIVERA, on behalf
of himself and those similarly situated;

ENTERED
★ _____ ★

Plaintiff,

COMPLAINT

v.

CV Index **09 3670**

J.M. HALEY CORP. and JOSEPH HALEY;

JURY TRIAL DEMANDED

Defendants.

WEXLER, J.

Plaintiff, Richard Rivera, on behalf of himself and all others similarly situated, by and through his Attorneys, VALLI KANE & VAGNINI LLP, brings this action for damages and other legal and equitable relief from the Defendants' violation of the laws proscribing wage and hour laws, stating the following as Plaintiff's claims against J.M. Haley Corporation and Joseph Haley ("J.M." or "Defendants"):

LINDSAY, M.

INTRODUCTION

1. This is an action brought by Plaintiff challenging acts committed by Defendants against Plaintiff amounting to wage and hour violations, as well as collective and class claims of violations of Federal and State wage and hour laws.
2. Plaintiff also brings this action on his own behalf and those similarly situated pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, ("FLSA") and the New York Labor Law, §§ 190 et seq. ("NYLL").

3. The Defendants committed violations of these statutes by engaging in a systematic scheme of failing to compensate Plaintiff and similarly situated employees their statutorily required wage for hours worked.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; (iii) under 29 U.S.C. § 201 et. seq.
5. The Court's supplemental jurisdiction is invoked pursuant to 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.
6. Venue is proper in this Court pursuant to 29 U.S.C. §§ 201-219, in as much as this judicial district lies in a State in which the unlawful employment practices occurred. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (c), in that Defendants maintain offices, conduct business and reside in this district.

PARTIES

7. Richard Rivera ("Plaintiff"), is a citizen of New York and resides in Ozone Park, New York.
8. Upon information and belief, Defendant J.M. Haley Corporation ("J.M.") is a corporation, organized under the laws of the State of New York and has a principle place of business within Westbury, New York.
9. Upon information and belief, Defendant Joseph Haley is a citizen and resident of the State of New York and proprietor and owner of Defendant J.M. Haley Corporation.

FACTS

10. Richard Rivera began his employment with Defendants in or about September of 2007.
11. Mr. Rivera and his similarly situated co-workers are paid by the hour for the work they perform for Defendants.
12. In or about January 2009, Defendants held a meeting notifying Plaintiff, and numerous similarly situated hourly workers, that they were suffering economic hardships. Rather than lay off employees, Defendants required anyone who wanted to maintain their employment to forgo 5 hours of pay per week.
13. Therefore, rather than being paid for the actual 40 hours of work each employee performed, they would only be paid for 35 hours of work.
14. In fact, Plaintiff and others would regularly work in excess of 40 hours per week and while Defendants properly compensated them for overtime, their paychecks still reflected they were only being paid for 35 hours of base pay as opposed to 40.
15. This unlawful practice continues and numerous employees have been denied their wages for their work.
16. This treatment occurred with Defendants full knowledge of the FLSA and State Law. Their choice to ignore the law and its requirements shows a willful violation of the law.
17. On or about July 20, 2009, Plaintiff refused to work the 40 hours without compensation. Instead, he stopped working after reaching the 35 hours he was being paid for.
18. Defendants suspended Plaintiff for refusing to work his full 40 hours, even though he was not being paid for the hours.
19. Plaintiff was required to return to work in order to keep his job.

COLLECTIVE ACTION ALLEGATIONS

20. Plaintiff seeks to bring this suit pursuant to 29 U.S.C. § 216(b) on his own behalf as well as those in the following class:

Current and former employees of Defendants who worked in excess of 35 hours per week and were not compensated for all the hours they worked. ("FLSA Plaintiffs").

21. Plaintiff is similarly situated to all such individuals because while employed by Defendants he and all FLSA Plaintiffs performed similar tasks, were subject to the same laws and regulations, were paid in the same or similar manner, were paid the same or similar rate, were required to work in excess of 35 hours per week but not paid for their time above 35 hours.

22. Defendants treated all FLSA Plaintiffs similarly in requiring them to work in excess of 35 hours per workweek but were paid for only thirty five hours. This was the stated policy of Defendants.

RULE 23 CLASS ALLEGATIONS

23. Plaintiff additionally seeks to maintain this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on his own behalf as well as those who are similarly situated and are also FLSA Plaintiffs, who, during the applicable statutes of limitations were subjected to violations of the New York Labor Law.

24. Under F.R.C.P. 23(b)(3) Plaintiffs must plead that the class:

- a. Is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class which predominate any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;

- d. The representative will fairly and adequately protect the class; and,
- e. A class action is superior to other methods of adjudication.

25. The Class which Plaintiff seeks to define includes:

Current and former employees of Defendants who worked in excess of 35 hours per week and were not compensated for all the hours they worked. ("NY Class").

Numerosity

26. Upon information and belief, J.M. has had fifty or more employees who were subjected to this policy. Thus there are a sufficient number of class members to establish the numerosity requirement.

Common Questions of Law and/or Fact

27. There are questions of law/fact that govern over the claims which are available to each and every Class Plaintiff, including but not limited to the following:

- a. Whether Class Plaintiffs worked in excess of 35 hours per work week and were not compensated for their hours worked;
- b. Whether Defendants maintain records of the hours worked by Class Plaintiffs;
- c. Whether Defendants kept accurate records of hours worked by Class Plaintiffs; and,
- d. Whether Defendants have any affirmative defenses for any of these claims.

Typicality of Claims and/or Defenses

28. Plaintiff was employed by Defendants in the same capacity as all of Defendants' employees aside from Management. All of Defendants' employees 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 Defendants' employees.

29. This treatment included, but is not limited to, failure to pay employees for all of the hours they were required to work.

Adequacy

30. The representative is an employee for Defendants, as he has not been terminated. He has kept substantial records from his time with Defendants and would properly and adequately represent the current and former employees who have been subjected to the treatment alleged herein. Additionally, Plaintiff's attorney has substantial experience in this field of law.

Superiority

31. 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. Plaintiff has no facts relating to the class claims that are atypical from those of the class. Indeed, upon information and belief, Plaintiff was treated identically to other employees aside from his individual claim for retaliation.

32. As and for the Collective Action claims brought pursuant to 29 U.S.C.S. § 216(b), Plaintiff asserts that he was treated in a similar or identical fashion to those individuals currently and formerly employed by Defendants.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL COLLECTIVE PLAINTIFFS**

For Violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219

27. Plaintiffs and all other employees of Defendants were required to work in excess of 35 hours a week yet were only compensated for thirty five hours. This violation was willful. This was true for all of Defendants' employees for the relevant time periods.

28. This practice is in violation of the Fair Labor Standards Act.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS PLAINTIFFS**

For Violation of the New York Labor Law § 190 et. seq.

29. Plaintiffs and all other employees of Defendants were required to work in excess of 35 hours a week but were only compensated for 35 hours. This violation was willful.

30. This practice is in violation of the New York Labor Law § 190 et. seq and § 640.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Classes demand judgment against Defendants as follows:

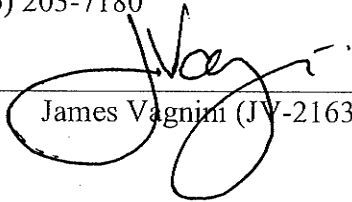
1. Demand a jury trial on these issues to determine liability and damages;
2. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;
3. A judgment declaring that the practices complained of herein are unlawful and in violation of Fair Labor Standards Act, 29 U.S.C. §§ 201-219, ("FLSA") and the New York Labor Law, §§ 190 et seq. ("NYLL").
4. All damages which Plaintiffs and the Classes have sustained as a result of Defendants' conduct, including back pay, front pay, general and special damages for lost compensation and job benefits they would have received but for Defendants' improper practices;
5. An award to the Plaintiffs and Classes of pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid wages from the date such wages were earned and due;

6. An award to the Plaintiffs and Classes for the amount of unpaid wages, including interest thereon, and penalties subject to proof;
7. Exemplary and punitive damages in an amount commensurate with Defendants' ability and so as to deter future malicious, reckless, and/or intentional conduct;
8. Awarding Plaintiffs their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs;
9. Pre-judgment and post-judgment interest, as provided by law; and
10. Granting Plaintiffs other and further relief as this Court finds necessary and proper.

Respectfully submitted,

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By: _____


James Vagnini (JV-2163)