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

DANA BRANDES, STACY NIEMIEC, DAWN BRADFORD and NICOLE CURTIS, individually and on behalf all others similarly situated, Plaintiffs, v. MERRILL LYNCH & CO., INC., MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., and BANK OF AMERICA CORPORATION, Defendants.	**Case No. 16 Civ. 4754** **CLASS AND COLLECTIVE ACTION COMPLAINT**

Plaintiffs Dana Brandes, Stacy Niemiec, Dawn Bradford, and Nicole Curtis (collectively, "Plaintiffs") individually and on behalf of all others similarly situated, by their attorneys Outten & Golden LLP, Shavitz Law Group, P.A. and Shulman Kessler LLP, for their Complaint against Defendants, Merrill Lynch & Co., Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc. and Bank of America Corporation (collectively "Merrill Lynch" or "Defendants"), allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action under the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. §§ 201, *et seq.* on behalf of themselves and all current and former Client Associates, Senior Client Associates, Registered Client Associates, Senior Registered Client Associates and persons in similar positions regardless of their precise titles who work and/or worked for Defendants within the United States (collectively, "CAs").

2. Defendants regularly have suffered, permitted, and/or encouraged CAs, including Plaintiffs, to work more than 40 hours in a workweek, but have not paid them for all of their hours worked.

3. Although Defendants have been aware that CAs work in excess of their scheduled hours each week, Defendants have failed to ensure that CAs' work hours were properly recorded and compensated.

4. Defendants Merrill Lynch & Co., Inc. and Merrill Lynch, Pierce, Fenner & Smith, Inc., wholly-owned subsidiaries of Bank of America Corporation, provide financial and investment services to customers across the United States, and manage over $2 trillion in client assets.

5. Defendant Bank of America Corporation is one of the largest banks in the United States and one of the largest brokerage firms in the world.

6. Defendants have employed CAs at their locations nationwide.

7. Pursuant to corporate policies applicable at Defendants' locations nationwide, Defendants have denied CAs compensation for all of their hours worked.

8. Pursuant to corporate policies applicable at Defendants' locations nationwide, Defendants have encouraged and required CAs to work more than 40 hours per workweek, but have not compensated them for all of their hours worked.

9. By the conduct described in this Class and Collective Action Complaint, Defendants have willfully violated the FLSA and state law by failing to pay their employees, including Plaintiffs, proper wages as required by law.

10. Plaintiffs Stacy Niemiec and Dawn Bradford (the "FLSA Plaintiffs") bring this action under the FLSA, 29 U.S.C. §§ 201 *et seq.*, on behalf of themselves and all similarly situated current and former CAs who elect to opt into this action pursuant to the collective action provision of the FLSA, 29 U.S.C. § 216(b), seeking: (i) unpaid wages for all hours worked in excess of 40 in a workweek; (ii) liquidated damages, and (iii) reasonable attorneys' fees and costs, pursuant to the FLSA.

11. Plaintiff Dana Brandes (the "New York Plaintiff") also brings this action on behalf of herself and all similarly situated current and former CAs who worked for Defendants in New York pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law ("NYLL"), Article 6, §§ 190 *et seq.*, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 142 *et seq*. (collectively, the "New York Wage Laws").

12. Plaintiff Nicole Curtis (the "Illinois Plaintiff") also brings this action on behalf of herself and all similarly situated current and former CAs who worked for Defendants in Illinois pursuant to Federal Rule of Civil Procedure 23 to remedy violations of Illinois Minimum Wage Law, 820 Ill. Comp. Stat. §§ 105/1, *et seq.*, and its implementing regulations, 56 Ill. Admin. Code §§ 210.100 through 300.850 (collectively, "Illinois Wage Laws").

13. On or about June 22, 2016, Plaintiffs and Defendants entered into a tolling agreement to toll the statute of limitations on any claim under the FLSA for Plaintiffs and those CAs or employees in similar job positions with different titles who worked for Defendants in the United States, effective as of June 22, 2016. Defendants terminated the tolling agreement effective August 8, 2016.

JURISDICTION AND VENUE

14. This Court has federal question jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1331.

15. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

16. This Court has jurisdiction over the state law claims under 28 U.S.C. § 1367 because the state law claims and the federal claim are so closely related that they form part of the same case or controversy under Article III of the United States Constitution.

17. This Court also has jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1332(d). There are more than 100 members of the proposed class. At least some of the members of the proposed class are citizens of a different state than Defendants. The claims of the proposed class members exceed $5,000,000 in the aggregate, exclusive of interest and costs.

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

19. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) because Defendants reside in New York and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

20. Each Defendant is a covered employer within the meaning of the FLSA, and has had gross revenues exceeding $500,000.00 for all relevant time periods.

THE PARTIES

Plaintiffs

Plaintiff Dana Brandes

21. Plaintiff Dana Brandes ("Brandes"), a resident of North Bellmore, New York, was employed by Defendants as a CA at Defendants' Hewlett, New York office from approximately February 2011 to January 2013.

22. Merrill Lynch, Pierce, Fenner & Smith, Inc. was the entity listed on Brandes's W-2.

23. Brandes regularly worked more than 40 hours in a workweek, but was not paid for any hours she worked over 40.

24. Throughout her employment with Defendants, Brandes regularly worked in the office from approximately 8:45 a.m. or earlier to at least 5:00 p.m. or later, Monday through Friday.

25. Throughout her employment with Defendants, Brandes regularly worked through lunch at her desk approximately two to five times per week.

26. On average, throughout her employment with Defendants, Brandes worked up to approximately 43 hours per week, during the relevant period.

27. For example, to the best of her recollection, which might be refreshed by review of documents and/or data currently in Defendants' sole possession, Brandes worked more than 40 hours specifically during the week of December 10, 2016 and was not paid for those hours worked over 40.

28. Defendants failed to keep accurate records of the hours that Brandes worked as a CA.

Plaintiff Stacy Niemiec

29. Plaintiff Stacy Niemiec ("Niemiec"), a resident of Novi, Michigan, was employed by Defendants as a CA at Defendants' Bloomfield Hills, Michigan office from approximately April 2014 to April 2015.

30. Upon information and belief, Merrill Lynch, Pierce, Fenner & Smith, Inc. was the entity listed on Niemiec's W-2.

31. Niemiec regularly worked more than 40 hours in a workweek, but was not paid for any hours she worked over 40.

32. Throughout her employment with Defendants, Niemiec regularly worked in the office from approximately 8:00 a.m. to approximately 5:00 p.m., Monday through Friday. Niemiec continued to work from home for approximately two to three additional hours in the evenings each week, Monday through Thursday, and an additional six to eight hours each weekend.

33. Throughout her employment with Defendants, Niemiec regularly worked through lunch at her desk approximately four to five times per week.

34. On average, throughout her employment with Defendants, Niemiec worked approximately 60 or more hours per week, during the relevant period.

35. For example, to the best of her recollection, which might be refreshed by review of documents and/or data currently in Defendants' sole possession, Niemiec worked more than 40 hours specifically during the week of April 13, 2015 and was not paid for those hours worked over 40.

36. Defendants failed to keep accurate records of the hours that Niemiec worked as a CA.

37. A written consent to join form for Niemiec is attached hereto as **Exhibit A**.

Plaintiff Dawn Bradford

38. Plaintiff Dawn Bradford ("Bradford"), a resident of Palm Bay, Florida, was employed by Defendants as a CA at Defendants' Melbourne, Florida office from approximately October 2008 to December 2013.

39. Upon information and belief, Merrill Lynch, Pierce, Fenner & Smith, Inc. was the entity listed on Bradford's W-2.

40. Bradford regularly worked more than 40 hours in a workweek, but was not paid for any hours she worked over 40.

41. Throughout her employment with Defendants, Bradford regularly worked in the office from approximately 8:00 a.m. or earlier to approximately 5:50 p.m. or later, Monday through Friday. During the relevant period, Bradford continued to work from home for approximately one additional hour in the evenings each week, two to three days per week, and an additional one to two hours one to two weekends each month.

42. Throughout her employment with Defendants, Bradford regularly worked through lunch at her desk approximately four to five times per week.

43. On average, throughout her employment with Defendants, Bradford worked approximately 48 to 55 hours per week, during the relevant period.

44. For example, to the best of her recollection, which might be refreshed by review of documents and/or data currently in Defendants' sole possession, Bradford worked more than

40 hours specifically during the week of September 9, 2013 and was not paid for those hours worked over 40.

45. Defendants failed to keep accurate records of the hours that Bradford worked as a CA.

46. A written consent to join form for Bradford is attached hereto as **Exhibit A**.

Plaintiff Nicole Curtis

47. Plaintiff Nicole Curtis ("Curtis"), a resident of Peoria, Illinois, was employed by Defendants as a CA at Defendants' Peoria, Illinois office from approximately November 2011 to August 2016.

48. Upon information and belief, Merrill Lynch, Pierce, Fenner & Smith, Inc. was the entity listed on Curtis's W-2.

49. Curtis regularly worked more than 40 hours in a workweek, but was not paid for any hours she worked over 40.

50. Throughout her employment with Defendants, Curtis regularly worked in the office from approximately 7:50 a.m. until between approximately 5:00 p.m. and 5:30 p.m. Monday through Friday when not preparing for her Series 7 and 66 exams, and until between approximately 6:30 p.m. and 7:00 p.m. three days per week and between approximately 5:00 p.m. and 5:30 p.m. the remaining two days per week when preparing for her Series 7 and 66 exams. When preparing for her Series 7 and 66 exams, Curtis also worked from home in the evenings two days per week for approximately two hours per day, and from the office on weekends for approximately six hours, in addition to the hours she typically worked from the office.

51. Throughout her employment with Defendants, Curtis regularly worked through lunch approximately four to five times per week.

52. On average, Curtis worked approximately 45 to 55 or more hours per week.

53. For example, throughout her employment with Defendants, to the best of her recollection, which might be refreshed by review of documents and/or data currently in Defendants' sole possession, Curtis worked more than 40 hours specifically during the week of December 8, 2014 and was not paid for those hours worked over 40.

54. Defendants failed to keep accurate records of the hours that Curtis worked as a CA.

55. A written consent to join form for Curtis is attached hereto as **Exhibit A**.

Defendants

Defendant Merrill Lynch & Co., Inc.

56. Upon information and belief, Defendant Merrill Lynch & Co., Inc. is a Delaware corporation doing business within New York County in the State of New York. Merrill Lynch & Co., Inc. is a wholly owned subsidiary of Bank of America Corporation.

Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc.

57. Upon information and belief, Defendant Merrill Lynch, Pierce, Fenner & Smith, Inc. is a Delaware corporation doing business within New York County in the State of New York and maintains corporate headquarters within the City and County of New York at 4 World Financial Center, New York, New York 10080. Merrill Lynch, Pierce, Fenner & Smith, Inc. is a wholly-owned subsidiary of Bank of America Corporation and Merrill Lynch & Co., Inc.

Defendant Bank of America Corporation

58. Upon information and belief, Defendant Bank of America Corporation is a Delaware corporation doing business within New York County in the State of New York.

59. During all relevant times, each Defendants employed Plaintiffs and other similarly situated current and former CAs and controlled and directed the terms of employment and compensation of Plaintiffs and other similarly situated current and former CAs. Upon information and belief, Defendants operate as a common enterprise such that the actions of one may be imputed to the other and/or so that they operate as joint employers within the meaning of the FLSA and state law.

60. Each Defendant had the power to control the terms and conditions of employment of Plaintiffs and other similarly situated current and former CAs, including without limitation those terms and conditions relating to the claims alleged herein.

61. During all relevant times, Defendants were Plaintiffs' employer or joint employer within the meaning of all applicable statutes.

62. Upon information and belief, at all times pertinent hereto, each Defendant has employed more than 500 people.

COLLECTIVE ACTION ALLEGATIONS

63. FLSA Plaintiffs bring the First Cause of Action pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and all similarly situated persons who elect to opt into this action who work or have worked for Defendants as CAs nationwide on or after July 8, 2013 (the "Collective").

64. FLSA Plaintiffs and other CAs are similarly situated in that they are subject to Defendants' common compensation policies, patterns, and/or practices, including without

limitation Defendants' policy, pattern, and/or practice of suffering, permitting, and/or encouraging CAs to work more than their scheduled hours per week without ensuring that all of their work hours were properly recorded and compensated.

65. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate FLSA Plaintiffs and other CAs. There are many similarly situated current and former CAs who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice regarding this lawsuit and the opportunity to join it. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records, such that notice should be sent to them pursuant to 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

The New York Class

66. The New York Plaintiff brings the Second and Third Causes of Action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all others who have worked for Defendants as CAs in New York between July 8, 2010 and the date of final judgment in this matter ("New York Class").

67. Excluded from the New York Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

68. The persons in the New York Class are so numerous that joinder of all members is impracticable.

69. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

70. Upon information and belief, the New York Class consists of more than 100 members.

71. Defendants acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

72. Common questions of law and fact exist as to the New York Class and predominate over any questions affecting only individual members, and include, but are not limited to, the following:

a. Whether Defendants failed to pay the New York Plaintiff and the New York Class overtime for all hours worked over 40 in a workweek;

b. Whether Defendants failed to keep true and accurate time records for all hours worked by the New York Plaintiff and the New York Class;

c. What proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

d. Whether Defendants failed to compensate the New York Plaintiff and the New York Class for all of the hours they worked; and

e. The nature and extent of class-wide injury and the appropriate measure of damages for the class.

73. The New York Plaintiff's claims are typical of the claims of the New York Class she seeks to represent. The New York Plaintiff and the New York Class work or have worked for Defendants as CAs in New York and have not been compensated for all of the hours they worked, including for hours worked over 40 in a workweek. The New York Plaintiff and the New York Class have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

74. The New York Plaintiff will fairly and adequately protect the interests of the New York Class. The New York Plaintiff understands that as a class representative, she assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. The New York Plaintiff recognizes that as a class representative, she must represent and consider the interests of the New York Class just as she would represent and consider their own interests. The New York Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over the class. The New York Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class. The New York Plaintiff understands that in order to provide adequate representation, she must be informed of developments in litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify at deposition and/or trial.

75. The New York Plaintiff has retained counsel competent and experienced in complex class actions and wage-and-hour litigation. There is no conflict between the New York Plaintiff and the New York Class.

76. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage and hour litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the New York Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies and procedures. Although the relative damages suffered by individual New York Class Members are not *de minimis*, such damages are small as compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior

because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments against Defendants' practices.

77. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

The Illinois Class

78. The Illinois Plaintiff brings the Fourth Cause of Action, an Illinois claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all others who have worked for Defendants as CAs in Illinois between July 8, 2013 and the date of final judgment in this matter ("the Illinois Class").

79. Excluded from the Illinois Class are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Illinois Class.

80. The persons in the Illinois Class are so numerous that joinder of all members is impracticable.

81. Although the precise number of such persons is unknown, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.

82. Upon information and belief, the size of the Illinois Class is at least 100 individuals.

83. Defendant acted or refused to act on grounds generally applicable to the Illinois Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Illinois Class as a whole.

84. Common questions of law and fact exist as to the Illinois Class that predominate over any questions solely affecting them individually and include, but are not limited to, the following:

a. Whether Defendants failed to compensate the Illinois Plaintiff and the Illinois Class overtime for all hours worked over 40 in a workweek;

b. Whether Defendants failed to keep true and accurate time records for all hours worked by the Illinois Plaintiff and the Illinois Class;

c. What proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;

d. Whether Defendants failed to compensate the Illinois Plaintiff and the Illinois Class for all of the hours they worked; and

e. The nature and extent of class-wide injury and the appropriate measure of damages for the class.

85. The Illinois Plaintiff's claims are typical of the claims of the Illinois Class she seeks to represent. The Illinois Plaintiff and the Illinois Class work or have worked for Defendants as CAs in Illinois and have not been compensated for all of the hours they worked, including for hours worked over 40 in a workweek. The Illinois Plaintiff and the Illinois Class have all sustained similar types of damages as a result of Defendants' failure to comply with the Illinois Wage Laws.

86. The Illinois Plaintiff will fairly and adequately represent and protect the interests of the members of the Illinois Class. The Illinois Plaintiff understands that as a class representative, she assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. The Illinois Plaintiff recognizes that as a class representative, she must represent and consider the interests of the Illinois Class just as she would represent and consider her own interests. The Illinois Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over the class. The

Illinois Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the Illinois Class. The Illinois Plaintiff understands that in order to provide adequate representation, she must be informed of developments in litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify at deposition and/or trial.

87. The Illinois Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between The Illinois Plaintiff and the Illinois Class members.

88. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where an individual plaintiff may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the Illinois Class have been damaged and are entitled to recovery as a result of Defendants' violations of the Illinois Wage Laws, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Illinois Class Members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

89. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

COMMON FACTUAL ALLEGATIONS

90. All of the work that Plaintiffs and other CAs have performed has been assigned by Defendants, and/or Defendants have been aware or should have been aware of all of the work that Plaintiffs and other CAs have performed.

91. CAs perform primarily clerical work such as assisting clients, opening accounts, closing accounts, verifying client income numbers, facilitating trades, accepting deposits and initiating withdrawals, completing reports, client updates, transferring accounts, assisting financial advisors, back office support, attending meetings, initiating check requests, wires, and electronic transfers, scheduling appointments, general clerical duties and handling telephone calls.

92. Additionally, if CAs are not already licensed at their date of hire, Defendants require them to prepare for and acquire their Series 7, 63, 65 and/or 66 licenses.

93. If CAs do not timely acquire their required licenses, they face adverse employment action up to and including termination.

94. In order to complete their job duties, CAs are required to work in excess of 40 hours per week.

95. However, pursuant to a centralized, company-wide policy, pattern, and/or practice set in whole or in part at Defendants' headquarters in New York, Merrill Lynch does not record or compensate all hours that CAs work each workweek.

96. Pursuant to a centralized, company-wide policy, pattern, and/or practice set in whole or in part at Defendants' headquarters in New York, Defendants classified all of their CAs as non-exempt from federal overtime protections regardless of where they worked, and suffered,

permitted and/or encouraged them to work in excess of 40 hours per week without ensuring that these hours were properly recorded or compensated.

97. Defendants failed to keep accurate records of the hours that Plaintiffs and other CAs worked.

98. Defendants failed to pay Plaintiffs and other CAs for all of their hours worked, including overtime hours they worked over 40 in a workweek.

99. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a policy, pattern, and/or practice of violating the FLSA, NYLL and Illinois Wage Laws. This policy, pattern, and/or practice includes but is not limited to:

a. willfully failing to pay Plaintiffs and other CAs proper overtime wages for hours that they worked in excess of 40 hours in a workweek; and

b. willfully failing to record and properly compensate Plaintiffs and other CAs for all of the time that they have worked for the benefit of Defendants.

100. Defendants are aware or should have been aware that the FLSA, NYLL and Illinois Wage Laws require them to pay Plaintiffs and other CAs for all hours worked, and to pay them an overtime premium for hours worked in excess of 40 hours per workweek.

101. Defendants' conduct alleged herein has been widespread, repeated, and consistent, and it is contrary to the FLSA, NYLL and Illinois Wage Laws.

FIRST CAUSE OF ACTION
Fair Labor Standards Act: Unpaid Overtime Wages
Brought by FLSA Plaintiffs Individually and on Behalf of the Collective

102. FLSA Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

103. At all relevant times, FLSA Plaintiffs and all members of the Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

104. The overtime wage provisions set forth in §§ 201 *et seq*. of the FLSA apply to Defendants.

105. Defendants were and are employers of FLSA Plaintiffs and all members of the Collective and are engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

106. At all relevant times, FLSA Plaintiffs and all members of the Collective were and are employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

107. Defendants have failed to pay FLSA Plaintiffs and all members of the Collective the wages to which they were entitled under the FLSA.

108. Defendants' violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional.

109. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255, as it may be tolled or extended by agreement, equity or operation of law.

110. As a result of Defendants' willful violations of the FLSA, FLSA Plaintiffs and all members of the Collective have suffered damages by being denied wages in accordance with 29 U.S.C. §§ 201 *et seq*., in amounts to be determined at trial or through undisputed record evidence, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
New York Labor Law: Unpaid Overtime
Brought by the New York Plaintiff Individually and on Behalf of the New York Class

111. The New York Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

112. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

113. At all times relevant, Defendants were an "employer" of the New York Plaintiff and the New York Class members within the meaning of the NYLL.

114. At all times relevant, the New York Plaintiff and the New York Class were "employees" of Defendants within the meaning of NYLL.

115. At all times relevant, Defendants employed the New York Plaintiff and the New York Class members, suffering or permitting them to work.

116. Defendants failed to pay overtime for all hours worked over 40 in a workweek to the New York Plaintiff and the New York Class members, in violation of the NYLL.

117. By Defendants' failure to pay the New York Plaintiff and the New York Class members overtime for all hours worked in excess of 40 hours per week, they have knowingly and willfully violated Article 19, §§ 650 *et seq*. and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142.

118. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of hours worked by the New York Plaintiff and members of the New York Class.

119. Defendants' violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

120. Due to Defendants' violations of the NYLL, the New York Plaintiff and the members of the New York Class have incurred harm and loss and are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

THIRD CAUSE OF ACTION
New York Labor Law: Wage Statements
Brought by the New York Plaintiff Individually and on Behalf of the New York Class

121. The New York Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

122. Defendants have willfully failed to supply the New York Plaintiff and the New York Class with accurate statements of wages as required by NYLL, Article 6, § 195(3), containing the regular rate or rates of pay and the basis thereof, overtime rate or rates of pay, and the total number of hours worked, including overtime hours.

123. Defendants' unlawful conduct, as described in this Class and Collective Action Complaint, has been willful. Defendants were aware or should have been aware that the practices described in this Class and Collective Action Complaint were unlawful.

124. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), the New York Plaintiff and the New York Class are entitled to statutory penalties of one hundred dollars for each workweek, between April 9, 2011 and February 26, 2015, that Defendants failed to provide each of them with accurate wage statements, or a total of twenty-five hundred dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by NYLL, Article 6, § 198(1-d).

125. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), the New York Plaintiff and the New York Class are entitled to statutory penalties of two hundred fifty dollars for

each workday, since February 27, 2015, that Defendants failed to provide each of them 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).

FOURTH CAUSE OF ACTION
Illinois Wage Laws: Unpaid Overtime Wages
Brought by the Illinois Plaintiff Individually and on Behalf of the Illinois Class

126. The Illinois Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

127. Defendants have engaged in a widespread pattern, policy, and practice of violating the Illinois Wage Laws, as detailed in this Class and Collective Action Complaint.

128. At all times relevant, Defendants were an "employer" of the Illinois Plaintiff and the Illinois Class members within the meaning of the Illinois Wage Laws.

129. At all times relevant, the Illinois Plaintiff and the Illinois Class were "employees" of Defendants within the meaning of Illinois Wage Laws.

130. At all times relevant, Defendants employed the Illinois Plaintiff and the Illinois Class members, suffering or permitting them to work.

131. Defendants violated Illinois Wage Laws, in relevant part, by failing to pay the Illinois Plaintiff and the members of the Illinois Class as required by the Illinois Wage Laws, including Illinois Minimum Wage Law, 820 Ill. Comp. Stat. §§ 105/1, *et seq.*, and its implementing regulations, 56 Ill. Admin. Code §§ 210.100 through 300.850.

132. Defendants failed to pay overtime for all hours worked over 40 in a workweek to the Illinois Plaintiff and the Illinois Class members, in violation of the Illinois Wage Laws.

133. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by the Illinois Plaintiff and the members of the Illinois Class.

134. Defendants' violations of the Illinois Wage Laws have been willful and intentional.

135. Due to Defendants' violations of the Illinois Wage Laws, the Illinois Plaintiff and the members of the Illinois Class are entitled to recover from Defendants their unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief:

A. Designation of this action as a collective action on behalf of the Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b);

B. Certification of the New York Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;

C. Designation of the New York Plaintiff as Class Representative of the New York Class;

D. Certification of the Illinois Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;

E. Designation of the Illinois Plaintiff as Class Representative of the Illinois Class;

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

G. An award of damages, according to proof, including liquidated damages, to be paid by Defendants;

H. Pre-judgment and post-judgment interest, as provided by law;

I. Attorneys' fees and costs of action incurred herein, including expert fees;

J. Payment of a service award to Plaintiffs, in recognition of the services they have rendered, and will continue to render, to the FLSA Collective, New York Class and Illinois Class; and

K. Such other relief as this Court deems just and proper.

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August 24, 2016

Respectfully submitted,

By: _____
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