

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARCO LUGO,
on behalf of himself and all others similarly situated,

Plaintiff,

v.

AUTOZONERS, LLC., a Nevada Limited
Liability Company, and AUTOZONE, INC., a
Nevada Corporation,

Defendants.

Index No.:

COMPLAINT

JURT TRIAL DEMANDED

Plaintiff (“Plaintiff”), on behalf of himself and all other similarly situated persons, by and through his undersigned counsel, allege upon personal knowledge as to himself and upon information and belief as to other matters (which is based on, among other things, his experiences at Defendants’ retail stores, review of Defendants’ records, conversations with Defendants’ employees and investigation of their counsel), as follows:

NATURE OF ACTION

1. Plaintiff brings this action on behalf of himself and all other similarly situated current and former hourly paid sales clerks and sales managers (collectively as “employees”) of AutoZoners, LLC and AutoZone, Inc. (“AutoZone” or “Defendants”). The Defendants in this action, by virtue of their management and control over the wages and work of AutoZone sales clerks and sales managers, are classified as “employers” under applicable labor law.

2. AutoZone owns and operates a national chain of retail stores that sell automotive replacement parts and accessories. AutoZone has approximately 4,534 stores nationwide and employed over 65,000 people as of August 27, 2011. As of that date, Defendants owned and

operated approximately 129 stores in New York and 121 stores in Pennsylvania. As particularized below, Defendants have engaged and continue to engage in illegal and improper wage practices that have deprived employees of millions of dollars in wages and overtime compensation. These practices include: (a) configuring the time clocks in AutoZone's stores to round down and artificially reduce the amount of time employees are credited with performing work at the Defendants' stores and thereby deprive employees of wages and overtime compensation to which they are entitled by law; (b) instructing store managers in AutoZone's stores to automatically deduct time for lunch from employee paychecks when employees are engaged in work on the Defendants' behalf, thereby depriving employees of wages and overtime compensation to which they are entitled by law; (c) interrupting uncompensated employee meal breaks with work requests after employees had already clocked out; (d) improperly placing the burden on employees to take affirmative steps to obtain compensation for work performed during their meal breaks that Defendant requested and had knowledge of; and (e) requesting that employees perform off-the-clock work prior to clocking in and after clocking out. These illegal practices and policies are uniform throughout AutoZone's stores and have been known to the Defendants for years. For these reasons, Plaintiff brings this action on behalf of himself and other AutoZone employees to recover unpaid wages, overtime compensation, damages, injunctive and other equitable relief and reasonable attorneys' fees and costs under the Fair Labor Standards Act (the "FLSA") §§ 201, *et. Seq.*, under McKinney's Labor Law (the "NYLL"), §§ 190, *et. seq.*, §§ 650, *et seq.*, and 12 NYCRR § 142-2.2, and pursuant to the Pennsylvania Minimum Wage Act of 1968 ("PMWA") as amended, 48 P.S. § 333.101 *et seq.*

JURISDICTION AND VENUE

3. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the

action involves a federal statute, the FLSA, 29 U.S.C. §216(b).

4. This Court has original jurisdiction over all claims in this action under the Class Action Fairness Act (“CAFA”) 28 U.S.C. 1332(d). This is a putative class action in which: (a) there are 100 or more members in the proposed class; (b) at least some members of the proposed class have a different citizenship from the Defendants; and (c) the claims of the proposed class members exceed \$5,000,000.00 in the aggregate.

5. This Court has supplemental jurisdiction under 28 U.S.C. § 1337 over the NYLL and PMWA state law wage and hour claims because those claims derive from a common nucleus of operative fact.

6. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1331(b)(1) and (2) because a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

THE PARTIES

Plaintiff

7. Plaintiff, Marco Lugo, is a resident of Ridgewood, New York. Mr. Lugo was employed by AutoZone on a full-time basis in store number 1863 located at 700 West Broad Street, Hazleton, Pennsylvania, 18201, from October 2008 until October 2010 as a sales manager and paid an hourly rate of approximately \$12.89. Prior to working at the Hazleton, Pennsylvania location, Mr. Lugo worked in store number 2938, located at 192 East Central Avenue, Spring Valley, New York, 10977, from May 2008 until October 2008 as a sales manager and paid an hourly rate of between \$8.50 and \$12.89. Prior to working at the Spring Valley, New York location, Mr. Lugo worked in store number 4725, located at 541 East 149th Street, Bronx, New York, 10455 from August 2007 until May 2008 as a sales manager and paid an hourly rate of between \$8.50 and \$12.89. Prior to working at the Bronx, New York location, Mr. Lugo worked

at an AutoZone store location that has since been closed located on Houston Street in Manhattan, New York from June 2006 until August 2007 as a sales clerk and sales manager and paid an hourly rate of between \$8.50 and \$12.89. Throughout Mr. Lugo's employment at AutoZone, he was asked to and did work before his shift was scheduled to begin, work during some or all of his lunch breaks, and work after his shift was scheduled to end. However, because of Defendants' improper off-the-clock work, rounding policies and interrupted meal breaks as described more fully below, Mr. Lugo was deprived of wages as required by the FLSA, NYLL and PMWA. During any given week, Mr. Lugo worked approximately 2 hours of uncompensated straight time and 3.5 hours of uncompensated overtime.

Defendants

8. AutoZoners, LLC is a Nevada Limited Liability Company conducting business in the Eastern District of New York.

9. AutoZone, Inc, is a Nevada Corporation conducting business in the Eastern District of New York.

10. Both AutoZoners, LLC and AutoZone, Inc., are incorporated under the laws of Nevada and are headquartered in Memphis, Tennessee.

11. The Defendants operate a chain of retail automotive accessory and replacement part stores publically traded on the New York Stock Exchange under the symbol "AZO". As of August 27, 2011, Defendants employed over 65,000 people, owned and operated approximately 4,534 stores nationwide with 129 stores in New York and 121 stores in Pennsylvania and had sales in excess of \$8 billion for the fiscal year ended August 27, 2011. AutoZone's business consists of selling automotive merchandise and services to consumers through their retail stores and internet website at autozone.com.

12. AutoZoners, LLC and AutoZone, Inc., are related organizations through, for example, common membership, governing bodies, trustees and/or officers and benefit plans.

13. Defendants share common management and have common ownership.

14. The wage and hour and all related employee compensation policies of Defendants are and were centrally and collectively dictated, controlled, and ratified.

15. Defendants had the power to control AutoZone's wage policies and practices through their oversight of day-to-day operating procedures, control over employee work schedules, ability to determine employees' rate of pay, and ability to control AutoZone's record keeping practices.

16. As such, Defendants are the "employer" – single, joint or otherwise – of Plaintiff and class members within the meaning of the FLSA, NYLL and PWMA.

FACTUAL ALLEGATIONS

Background

17. AutoZone has hundreds, if not thousands of hourly paid sales clerks and sales managers. Each employee is assigned to a specific department within each store location, including but not limited to: (a) the commercial sales department; and (b) the "Do It Yourself" ("DIY") department.

18. Each AutoZone location has a store manager, responsible for overseeing the general operability of each store. Store managers, and others with executive positions, who are paid fixed salaries, are not members of the classes that Plaintiff seeks to represent in this action.

19. AutoZone hired Plaintiff and promised to pay hourly wages for his work. On average, full-time employees are paid between minimum wage and \$12.89 per hour and have a standard work week of approximately 40 hours.

20. Each full-time employee is entitled to a daily unpaid lunch break of one hour.
21. Employees are required to clock in when they arrive at work, clock out when they go to lunch, clock in when they return from lunch and clock out when they leave for the day. The time-keeping system and the procedures for using it are the same at each AutoZone store. The system requires employees to input a five digit code to clock in and clock out.

AutoZone's Time-Keeping System Is Configured to Deprive Employees of Compensation When They Perform Services on the Defendant's Behalf

22. AutoZone's employees are regularly required to perform services before they are scheduled to begin work and/or after their shift is scheduled to end. These directives typically come from store managers and other supervisors who instruct employees to begin or complete tasks when they are not scheduled to be working. For example, it is common for employees to be asked to complete a task or assist a customer before they have clocked in for their shift or after they have already clocked out. Defendants also required employees to work during lunch if a manager, supervisor or customer requested assistance or if a co-worker did not return from a lunch break.

23. Although they request and are aware of the extra work employees perform, Defendants have knowingly configured AutoZone's time-keeping system to deny compensating employees for some – if not all – of this time spent on the Company's behalf. Specifically, while the time-keeping system records an employee's in and out time in minutes, it totals the employee's time in quantifiable increments and then systematically rounds down the employee's total time worked. This rounding policy consistently and artificially reduces the total time employees are credited with working at the Company, sometimes by 20 or more minutes per day.

24. Plaintiff and other AutoZone employees do not have access to their time reports that reflect these huge discrepancies and time shaving practices. Thus, most AutoZone

employees are unaware that Defendants have failed to compensate them for work performed before and after shifts and during lunch breaks.

25. In addition to improper rounding policies and off-the-clock work, AutoZone also inappropriately instructed store managers and other supervisors to deduct an hour for lunch even when employees were working in the store and did not clock out. Furthermore, even when employees did clock out for lunch, Defendants did not ensure that Plaintiff and the class members were completely relieved of their work duties during their uncompensated lunch breaks.

26. Plaintiff and class members are routinely not completely relieved of their job duties and are required to stay at their duty post during their uncompensated lunch breaks. Additionally, Defendants do not prohibit Plaintiff and class members from working during their lunch breaks and routinely suffer or permit Plaintiff and class members to perform such work.

27. Defendants routinely fail to ensure that unauthorized work is not being performed during employee lunch breaks and also improperly shift the burden on AutoZone employees to take affirmative steps to obtain compensation for work performed during their lunch breaks.

28. Even though Defendants know that Plaintiff and class members are working during lunch breaks, Defendants fail to compensate Plaintiff and class members for their work, electing to accept the benefits of Plaintiff's and class members' uncompensated work.

FAIR LABOR STANDARDS ACT COLLECTIVE ACTION ALLEGATIONS

29. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

30. Plaintiff, Marco Lugo, brings this FLSA collective action on behalf of himself and all other persons similarly situated pursuant to 29 U.S.C. §§ 207 and 216(b), specifically, on behalf of:

All hourly paid sales clerks and sales managers who worked in a AutoZone store location in the United States, who are or were employed within the three years preceding the filing of this action by Defendants, and who were: (a) not compensated for all work performed while clocked-in; and/or (b) were not compensated for all work performed while off-the-clock; and/or (c) were not fully compensated for time worked over forty hours per week at overtime rates (the “FLSA Collective Class”).

31. Excluded from the FLSA Collective Class are Defendants, their legal representatives, officers, directors, assigns, and successors, or any individual who has or had a controlling interest in AutoZone. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the FLSA Collective Class.

32. Plaintiff is unable to state the exact number of the class without discovery of Defendants' books and records but estimates the class to exceed several hundred if not thousands of individuals.

33. Defendants required Plaintiff and the FLSA Collective Class members to work during required meal periods and to perform work on-the-clock and/or off-the-clock for which they were not fully compensated. Defendants also failed to pay Plaintiff and members of the FLSA Collective Class time and one half their regular rate of pay for hours worked beyond forty hours in a workweek.

34. Defendants' unlawful conduct has been widespread, repeated and consistent.

35. Defendants' conduct was willful and in bad faith and has caused significant damages to Plaintiff and the FLSA Collective Class.

36. Defendants are liable under the FLSA for failing to properly compensate Plaintiff and the FLSA Collective Class, and, as such, notice should be sent out to the FLSA Collective Class. There are numerous similarly situated, current and former employees of Defendants who have been denied wages in violation of the FLSA who would benefit from the issuance of a Court supervised notice of the present lawsuit and the opportunity to join in the action. Those similarly situated employees are known to Defendants and are readily identifiable through Defendants' records.

NEW YORK CLASS ACTION ALLEGATIONS

37. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

38. Plaintiff, Marco Lugo, brings this action on his own behalf and as a class action pursuant to Article 9 of New York Civil Practice Law and Rules on behalf of a Class consisting of:

All hourly paid sales clerks and sales managers who worked in a AutoZone store in the state of New York, who are or were employed within the six years preceding the filing of this action by Defendants, and who were: (a) not compensated for all work performed while clocked-in; and/or (b) were not compensated for all work performed while off-the-clock; and/or (c) were not fully compensated for time worked over forty hours per week at overtime rates (the "New York Class").

39. Excluded from the New York Class are Defendants, their legal representatives, officers, directors, assigns, and successors, or any individual who has or had a controlling interest in AutoZone. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the New York Class.

40. As of August 27, 2011, AutoZone operated 129 stores in New York State, with each store employing approximately 8 to 10 employees. Thus, AutoZone has approximately

1,032 to 1,290 employees in New York and systematically fails and refuses to pay them for all compensable hours worked. The members of the New York Class are so numerous that joinder of all members in one proceeding is impracticable.

41. Plaintiff's claims are typical of the claims of other New York Class members because he was an hourly-wage employee who was not compensated for work performed at the employer's request before and after shift times and during meal periods. The Plaintiff and other New York Class members have sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. The Plaintiff and other New York Class members have been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

42. Plaintiff will fairly and adequately protect the interests of the New York Class. Plaintiff has retained counsel competent and experienced in complex class action and wage and hour litigation. There is no conflict between the Plaintiff and the New York Class.

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

- (a) Whether Defendants failed and/or refused to pay Plaintiff and the New York Class for off-the-clock time spent working in violation of New York Law;
- (b) Whether Defendants failed and/or refused to pay Plaintiff and the New York Class for all of the compensable time that they worked for Defendants while clocked-in;
- (c) Whether Defendants failed to keep true and accurate time records for all

hours worked by their employees as required by New York Labor Law §§ 190 *et seq.* and 650 *et seq.*;

- (d) Whether Defendants correctly compensated members of the New York Class for hours worked in excess of forty per workweek;
- (e) Whether Defendants failed to comply with the posting and notice requirements of the NYLL;
- (f) Whether Defendants engaged in a pattern and/or practice in New York of forcing, coercing, and/or permitting Plaintiff and New York Class members to perform work for Defendants' benefit which was not compensated;
- (g) Whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (h) The nature and extent of class-wide injury and the measure of damages for those injuries.

44. Class action treatment is superior to any alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. Individual class members' damages are inadequate to justify the costs of prosecuting their claims in any manner other than a class action. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Members of the New York Class are readily identifiable from Defendants' own

records.

45. Prosecution of separate actions by individual members of the New York Class would create the risk of inconsistent or varying adjudications with respect to individual members of the New York Class that would establish incompatible standards of conduct for Defendants.

46. Without a class action, Defendants will retain the benefit of their wrongdoing and will continue a course of action that will result in further damages to Plaintiff and the New York Class.

47. Plaintiff intends to send notice to all members of the New York Class to the extent required by New York C.P.L.R. § 904.

PENNSYLVANIA CLASS ACTION ALLEGATIONS

48. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

49. Plaintiff, Marco Lugo, brings this action on his own behalf and as a class action pursuant to Pennsylvania Rules of Civil Procedure § 1701 *et seq.* on behalf of a Class consisting of:

All hourly paid sales clerks and sales associates who worked in a AutoZone store in the state of Pennsylvania, who are or were employed within the three years preceding the filing of this action by Defendants, and who were: (a) not compensated for all work performed while clocked-in; and/or (b) were not compensated for all work performed while off-the-clock; and/or (c) were not fully compensated for time worked over forty hours per week at overtime rates (the “Pennsylvania Class”).

50. Excluded from the Pennsylvania Class are Defendants, their legal representatives, officers, directors, assigns, and successors, or any individual who has or had a controlling interest in AutoZone. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the Pennsylvania Class.

51. As of August 27, 2011, AutoZone operated 121 stores in Pennsylvania State with each store employing approximately 8 to 10 employees. Thus, AutoZone has approximately 968 to 1,210 employees in Pennsylvania and systematically fails and refuses to pay them for all compensable hours worked. The members of the Pennsylvania Class are so numerous that joinder of all members in one proceeding is impracticable.

52. Plaintiff's claims are typical of the claims of other Pennsylvania Class members because he was an hourly-wage employee who was not compensated for work performed at the employer's request before and after shift times and during meal periods. The Plaintiff and other Pennsylvania Class members have sustained similar types of damages as a result of Defendants' failure to comply with the PMWA. The Plaintiff and other Pennsylvania Class members have been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

53. Plaintiff will fairly and adequately protect the interests of the Pennsylvania Class. Plaintiff has retained counsel competent and experienced in complex class action and wage and hour litigation. There is no conflict between the Plaintiff and the Pennsylvania Class.

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

- (a) Whether Defendants failed and/or refused to pay Plaintiff and the Pennsylvania Class for off-the-clock time spent working in violation of Pennsylvania Law;
- (b) Whether Defendants failed and/or refused to pay Plaintiff and the Pennsylvania Class for all of the compensable time that they worked for

Defendants while clocked-in as required by Pennsylvania Labor Law 43
Pa. Stat. Ann. § 333.104.;

- (c) Whether Defendants failed to keep true and accurate time records for all hours worked by their employees as required by Pennsylvania Labor Law 43 Pa. Stat. Ann. § 333.108.;
- (d) Whether Defendants correctly compensated members of the Pennsylvania Class for hours worked in excess of forty per workweek;
- (e) Whether Defendants failed to comply with the posting and notice requirements of the PWMA;
- (f) Whether Defendants engaged in a pattern and/or practice in Pennsylvania of forcing, coercing, and/or permitting Plaintiff and Pennsylvania Class members to perform work for Defendants' benefit which was not compensated;
- (g) Whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (h) The nature and extent of class-wide injury and the measure of damages for those injuries.

55. Class action treatment is superior to any alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would entail. Individual class members' damages are inadequate to justify the costs of prosecuting their claims in any manner other than a class action. No difficulties are likely to be

encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Members of the Pennsylvania Class are readily identifiable from Defendants' own records.

56. Prosecution of separate actions by individual members of the Pennsylvania Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Pennsylvania Class that would establish incompatible standards of conduct for Defendants.

57. Without a class action, Defendants will retain the benefit of their wrongdoing and will continue a course of action that will result in further damages to Plaintiff and the Pennsylvania Class.

58. Plaintiff intends to send notice to all members of the Pennsylvania Class to the extent required by Pennsylvania Rules of Civil Procedure § 1712.

FIRST CAUSE OF ACTION

VIOLATION OF THE FAIR LABOR STANDARDS ACT **(On Behalf of Plaintiff, Marco Lugo and the FLSA Collective Class)**

59. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

60. At all relevant times, Defendants have been, and continue to be, "employers" engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed and continue to employ, employees, including Plaintiff and each of the members of the FLSA Collective Class.

61. Plaintiff consents in writing to be a part of this action pursuant to FLSA, 29

U.S.C. § 216(b), and attached hereto as exhibit A is a copy of Plaintiff's Opt-in form. As this case proceeds, it is likely that other individuals will sign consent forms and join as Plaintiff.

62. The FLSA requires each covered employer such as Defendants to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per workweek.

63. The FLSA also requires each covered employer to pay the minimum wage for all hours worked.

64. Plaintiff and the members of the FLSA Collective Action were and are entitled to be paid minimum wage and overtime compensation for all hours worked.

65. Defendants, pursuant to their policies and practices, failed and refused to pay minimum wage and overtime premiums to Plaintiff and the members of the FLSA Collective Class for all of their hours worked.

66. By failing to compensate Plaintiff and the members of the FLSA Collective Class for minimum wage and overtime compensation, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. § 201, *et seq.*

67. By improperly rounding FLSA Collective Class time entries, Defendants have violated Department of Labor Regulation 29 C.F.R. § 785.48(b).

68. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

69. Plaintiff, on behalf of himself and the FLSA Collective Class, seeks damages in the amount of their unpaid wages and overtime compensation, interest, and such other legal and equitable relief as the Court deems just and proper.

70. Plaintiff, on behalf of himself and the FLSA Collective Class, seeks recovery of

attorney's fees and costs, to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

Violations of New York Labor Law – Nonpayment of Straight Wages §§ 190 *et seq.* and 650 *et seq.* and 12 NYCRR 142-2.1 and 142-2.2 (On Behalf of Plaintiff, Marco Lugo and the New York Class)

71. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

72. Pursuant to New York Labor Law §§ 190, 191, 193, 198 and 652, Defendants have willfully failed to pay the straight wages due as set forth in the preceding paragraphs of this Complaint to Plaintiff and the New York Class in violation of New York Labor Law §§ 190, 191, 193, 198 and 652 and 12 N.Y.C.R.R. 142-2.1 and 142-2.2.

73. Defendants were not and are not permitted by state or federal law, or by order of a court of competent jurisdiction, to withhold or divert any portion of the Plaintiff's and the New York Class' wages that concern this lawsuit.

74. Defendants were not authorized by Plaintiff or any New York Class members to withhold, divert or deduct any portion of their unpaid wages which are the subject of this lawsuit.

75. Pursuant to New York Labor Law § 198, employers such as Defendants who intentionally fail to pay an employee wages in conformance with New York Labor Law shall be liable to the employee for the wages or expenses that were intentionally not paid, and court costs and attorneys' fees incurred in recovering the unpaid wages.

76. Defendants have violated the New York Labor Law by failing to pay Plaintiff and the members of the New York Class for all compensable time and by failing to pay Plaintiff and the members of the New York Class for the straight time worked at the established rate.

77. Plaintiff, on behalf of himself and the New York Class, seeks the amount of underpayments based on Defendants failure to pay straight wages of at least the minimum wage for all hours worked, as provided by the New York Labor Law, and such other legal and equitable relief as the Court deems just and proper.

78. Plaintiff does not seek liquidated damages under the NYLL on behalf of the New York Class but reserves his right to do so.

THIRD CAUSE OF ACTION

New York Labor Law – Unpaid Overtime (On Behalf Plaintiff, Marco Lugo and the New York Class)

79. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

80. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations 12 N.Y.C.R.R. 142-2.1 and 142-2.2 apply to Defendants and protect Plaintiff and the members of the New York Class.

81. Defendants have failed to pay Plaintiff and members of the New York Class overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

82. By Defendants' knowing and/or intentional failure to pay Plaintiff and the members of the New York Class overtime wages for hours worked in excess of forty hours per week, they have willfully violated NYLL Article 19, §§ 650 *et. seq.*, and the supporting New York State Department of Labor Regulations.

83. Due to Defendants' violations of the NYLL, Plaintiff and the members of the New York Class are entitled to recover from the Defendants their unpaid overtime wages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

84. Plaintiff does not seek liquidated damages under the NYLL on behalf of the members of the New York Class but reserves his right to do so.

FOURTH CAUSE OF ACTION

Violations of Pennsylvania Labor Law – Nonpayment of Straight and Overtime Wages 43 P.S. §§ 333.101 *et seq.*

(On Behalf of Plaintiff, Marco Lugo and the Pennsylvania Class)

85. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

86. Plaintiff and members of the Pennsylvania Class were employees of AutoZone within the meaning of 43 P.S. § 333.103(h), while AutoZone was the employer of Plaintiff and members of the Pennsylvania Class within the meaning of 43 P.S. § 333.103(g).

87. Pursuant to 43 P.S. §§ 333.101 *et seq.*, Defendants have willfully failed to pay the straight and overtime wages due as set forth in the preceding paragraphs of this Complaint to Plaintiff and members of the Pennsylvania Class.

88. Plaintiff and members of the Pennsylvania Class were entitled to be paid straight time their regular rate of pay for all hours worked up to forty in a workweek, and overtime compensation at not less than one and one half times their regular rates of pay for all hours worked in excess of forty hours in a workweek pursuant to 43 P.S. § 333.103(c).

89. Defendants were not and are not permitted by state or federal law, or by order of a court of competent jurisdiction, to withhold or divert any portion of the Plaintiff's and the Pennsylvania Class' wages that concern this lawsuit.

90. Defendants were not authorized by Plaintiff or any Pennsylvania Class members to withhold, divert or deduct any portion of their unpaid wages which are the subject of this lawsuit.

91. Pursuant to 43 P.S. § 333.113, employers such as Defendants who intentionally fail to pay an employee wages in conformance with Pennsylvania Labor Law shall be liable to the employee for the wages or expenses that were intentionally not paid, and court costs and attorneys' fees incurred in recovering the unpaid wages.

92. Defendants have violated the PMWA by failing to pay Plaintiff and the members of the Pennsylvania Class for all compensable time and by failing to pay Plaintiff and the members of the Pennsylvania Class for the straight time worked at the established rate and overtime payable at one and one half times the established rate.

93. Plaintiff, on behalf of himself and the Pennsylvania Class, seeks the amount of underpayments based on Defendants failure to pay straight wages of at least the minimum wage and uncompensated overtime for all hours worked, as provided by the PMWA, and such other legal and equitable relief as the Court deems just and proper.

94. Plaintiff does not seek liquidated damages under the PMWA on behalf of the Pennsylvania Class but reserves his right to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Marco Lugo, individually and on behalf of the FLSA Collective Class, seeks the following relief:

A. Designation of this action as a collective action on behalf of the FLSA Collective Class (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Plaintiff Consent Forms pursuant to 29 U.S.C. § 216(b);

B. Designation of Plaintiff, Marco Lugo, as the Representative of the FLSA

Collective Class;

- C. Appointment of Plaintiff's counsel as Lead Counsel for the FLSA Collective Class;
- D. An award of damages, according to proof, including but not limited to unpaid wages (straight wages and overtime) and lost benefits, to be paid by the Defendants;
- E. An award of costs incurred herein, including expert fees;
- F. An award of attorneys' fees pursuant to 29 U.S.C. § 216;
- G. An award of pre-judgment and post judgment interest, as provided by law; and
- H. All such other relief as this Court shall deem just and proper.

WHEREFORE, Plaintiff, Marco Lugo, individually and on behalf of the New York Class, seeks the following relief:

- A. Certification of this action as a class action under Rule 23 and the appointment of Plaintiff as the representative of the New York Class and Plaintiff's counsel as Lead Counsel for the New York Class;
- B. On the Second Cause of Action (Violation of New York Labor Law – Nonpayment of Straight Wages):
 - 1. An award to Plaintiff and members of the New York Class of damages for the amount of unpaid straight wages in addition to interest subject to proof;
 - 2. An award to Plaintiff and the members of the New York Class of reasonable attorneys' fees and costs pursuant to New York Labor Law;
- C. On the Third Cause of Action (Violation of New York Labor Law – Unpaid Overtime):
 - 1. An award to Plaintiff and class members of damages for the amount of

unpaid overtime, in addition to interest subject to proof; and

2. An award to Plaintiff and class members of reasonable attorneys' fees and costs pursuant to New York Labor Law.

WHEREFORE, Plaintiff, Marco Lugo, individually and on behalf of the Pennsylvania Class, seeks the following relief:

A. Certification of this action as a class action under Rule 23 and the appointment of Plaintiff as the representative of the Pennsylvania Class and Plaintiff's counsel as Lead Counsel for the Pennsylvania Class;

B. On the Fourth Cause of Action (Violations of Pennsylvania Labor Law – Nonpayment of Straight and Overtime Wages):

1. An award to Plaintiff and members of the Pennsylvania Class of damages for the amount of unpaid straight wages in addition to interest subject to proof;

2. An award to Plaintiff and members of the Pennsylvania Class of damages for the amount of unpaid overtime in addition to interest subject to proof;

3. An award to Plaintiff and the members of the Pennsylvania Class of reasonable attorneys' fees and costs pursuant to Pennsylvania Labor Law;

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury of all issues so triable.

Dated: New York, New York
 February 11, 2013



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