UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DIONNE MARSHALL and LUCIA GOMEZ, on behalf of themselves and all others similarly situated, Plaintiffs, v. DEUTSCHE POST DHL and DHL EXPRESS (USA) INC. Defendants.	Index No.: 1:13-cv-01471 (RJD)(JO) **FIRST AMENDED COMPLAINT** **JURT TRIAL DEMANDED**

Plaintiffs ("Plaintiffs"), on behalf of themselves and all other similarly situated persons, by and through their undersigned counsel, allege upon personal knowledge as to themselves and upon information and belief as to other matters (which is based on, among other things, their experiences at Defendants' facilities, review of Defendants' records, conversations with Defendants' employees and investigation of their counsel), as follows:

NATURE OF ACTION

1. Plaintiffs bring this action on behalf of themselves and all other similarly situated current and former hourly paid and non-exempt Service Agents and Senior Service Agents (collectively, "Agents") of Deutsche Post DHL and DHL Express (USA) Inc. (collectively, "DHL" or "Defendants.") The Defendants in this action, by virtue of their management and control over the wages and work of DHL Agents, are classified as "employers" under applicable labor law.

2. DHL operates as the world's largest global logistics company providing international express mail services. DHL has a presence in approximately 220 countries and territories, including a permanent presence in New York and employs over 275,000 people

throughout the United States.

3. An Agent's duties include entry writing and flight manifesting, which involves inputting information about incoming packages into DHL software and categorizing packages according to the United States Customs and Border Protection Department's clearance protocol. Once information is entered, Agents receive releases from the Customs Department regarding individual shipment clearance.

4. 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 DHL's facilities to round down and artificially reduce the amount of time employees are credited with performing work at the Defendants' facilities and thereby deprive employees of wages and overtime compensation to which they are entitled by law; (b) automatically deducting 30 minutes for meal breaks from employee paychecks, even when employees have signed back in prior to the expiration of the full 30 minute meal break and are engaged in work on the Defendants' behalf, thereby depriving employees of wages and overtime compensation to which they are entitled by law; and (c) requesting that employees perform off-the-clock work prior to clocking in and after clocking out, thereby depriving Agents of wages and overtime compensation to which they are entitled by law. These illegal practices and policies are uniform throughout DHL's facilities and have been known to the Defendants for years. For these reasons, Plaintiffs bring this action on behalf of themselves and other DHL Agents to recover unpaid wages, overtime compensation, damages and reasonable attorneys' fees and costs under the Fair Labor Standards Act (the "FLSA") §§ 201, *et. Seq.,* and under McKinney's Labor Law (the "NYLL"), §§ 190, *et. seq.,* §§ 650, *et seq.,* and 12 NYCRR § 142-2.2.

JURISDICTION AND VENUE

5. 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).

6. 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 proposed 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.

7. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the NYLL state law wage and hour claims because those claims derive from a common nucleus of operative fact.

8. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(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

Plaintiffs

9. Plaintiff, Dionne Marshall, is a resident of Jamaica, New York. Ms. Marshall was employed by DHL on a full-time basis at their John F. Kennedy Airport facility in New York, from February 1998 until November 2012 as a Service Agent and Senior Service Agent and paid an hourly rate of approximately $25.70. Throughout Ms. Marshall's employment at DHL, she was asked to and did work before her shift was scheduled to begin and work during some or all of her meal breaks for which she was not properly compensated. However, because of Defendants' improper time-rounding policies and automatic meal deductions as described more fully below, Ms. Marshall was deprived of wages as required by the FLSA and NYLL.

Additionally, Ms. Marshall was frequently asked to and did perform work before the start of her shift, after the end of her shift, and during her lunch break without compensation. This off-the-clock work and work performed during meal breaks was significant, integral and indispensable to the performance of job related duties, was not a *de minimis* task or request and was predominantly for the Defendants' benefit. Work performed during off-the-clock periods included: (1) reviewing e-mails from a prior shift relating to freight needing to be cleared for customs; (2) sending e-mails to "clear freight"; and (3) various other job related duties. During any given week, Ms. Marshall worked approximately 1 – 1.5 hours of uncompensated overtime. By conservative calculations, this would equate over the course of one year to an aggregate amount of approximately $1,500.

10. Plaintiff, Lucia Gomez, is a resident of Brooklyn, New York. Ms. Gomez was employed by DHL on a full-time basis at their John F. Kennedy Airport facility in New York, from November 1999 until November 2012 as a Service Agent and paid an hourly rate of approximately $21.60. Throughout Ms. Gomez's employment at DHL, she was asked to and did work before her shift was scheduled to begin and work during some or all of her meal breaks for which she was not properly compensated. However, because of Defendants' improper time-rounding policies and automatic meal deductions as described more fully below, Ms. Gomez was deprived of wages as required by the FLSA and NYLL. Additionally, Ms. Gomez was frequently asked to and did perform work before the start of her shift, after the end of her shift, and during her lunch break without compensation. This off-the-clock work and work performed during meal breaks was significant, integral and indispensable to the performance of job related duties, was not a *de minimis* task or request and was predominantly for the Defendants' benefit. Work performed during off-the-clock periods included: (1) reviewing e-mails from a prior shift

relating to freight needing to be cleared for customs; (2) sending e-mails to "clear freight"; and (3) various other job related duties. During any given week, Ms. Gomez worked approximately 1 – 1.5 hours of uncompensated overtime. By conservative calculations, this would equate over the course of one year to an aggregate amount of approximately $1,500.

Defendants

11. DHL Express (USA) Inc., is a private Company conducting business in the Eastern District of New York. It was established and incorporated under the laws of California and has its United States headquarters in Florida.

12. Deutsche Post DHL is the parent company of DHL Express (USA) Inc. and is located at their global headquarters along with DHL Express Inc.'s global headquarters in Bonn, Germany.

13. Defendants provide international express, air and ocean freight, road and rail transportation, contract logistics and international mail services. They are the third largest global provider of such services. Defendants employ approximately 275,000 people, operate out of more than 220 countries and territories and generated revenue in excess of €53 billion in 2011.

14. Deutsche Post DHL and DHL Express (USA) Inc., are related organizations through, among other things, common membership, governing bodies, trustees and/or officers and benefit plans. Defendants also share common management and have common ownership.

15. The wage and hour and all related employee compensation policies of Defendants are and were centrally and collectively dictated, controlled, and ratified. As such, Defendants had the power to control DHL'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 DHL's record keeping practices.

16. Thus, Defendants are the "employer" – single, joint or otherwise – of Plaintiffs and class members within the meaning of the FLSA and NYLL.

FACTUAL ALLEGATIONS

Background

17. DHL has thousands of hourly paid non-exempt Agents. Each Agent is assigned to a specific DHL processing facility, including the Plaintiffs' facility at John F. Kennedy Airport in New York.

18. Each DHL facility has a Supervisor who is responsible for overseeing and assigning Agents their workload and daily tasks. Additionally, each DHL facility has a Manager responsible for overseeing the general operability and day-to-day administration of each site. Directors, Supervisors, Managers and others with executive positions, who are paid fixed salaries, are not members of the classes Plaintiffs seek to represent in this action.

19. DHL hired Plaintiffs and promised to pay hourly wages for their work. On average, full-time employees are paid between minimum wage and $25.70 per hour and have a standard work week of approximately 40 hours. Moreover, each full-time employee is entitled to a daily unpaid meal break of 30 minutes.

20. Agents are required to clock in when they arrive at work, clock out when they go on a meal break, clock in when they return from a meal break and clock out when they leave for the day. The time-keeping system and the procedures for using it are the same at each DHL facility. In this regard, DHL uses time tracking software developed by Kronos Inc. The software requires employees to swipe their identification badge to clock in and clock out each day.

DHL's Time-Keeping System Is Configured to Deprive Employees of Compensation When They Perform Services on Defendants' Behalf

21. DHL's Agents regularly perform services before they are scheduled to begin work. If a DHL Agent at the John F. Kennedy Airport facility or Los Angeles International Airport facility signs in for their shift 10 or more minutes prior to the start of the shift, the Agent is compensated for the excess time they have worked. However, Agents at these facilities are not compensated for time worked under 10 minutes prior to the beginning of their shift. Furthermore, if a DHL Agent at the Miami International Airport facility signs in for their shift 30 or more minutes prior to the start of the shift, the Agent is compensated for the excess time they have worked. However, Agents at this facility are not compensated for time worked under 30 minutes prior to the beginning of their shift. These services are performed at the request of Directors, Supervisors, Managers and other superiors who know that Agents will not be paid for this time and instruct Agents to begin or complete tasks within the 9 minute or 29 minute unpaid window before they are scheduled to be working. For example, if an Agent at the John F. Kennedy Airport facility or Los Angeles International Airport facility is scheduled to start their shift at 9:00 a.m., and they clock in at 8:45 a.m., they will be compensated for the additional 15 minutes of work because DHL's time keeping software accounts for all time in excess of 9 minutes prior to an Agents' shift at these facilities. However, if an Agent is scheduled to start their shift at 9:00 a.m., and they clock in at 8:51 a.m., they will not be properly compensated for the additional 9 minutes of work because DHL's time keeping software at these facilities does not account for any time within the 9 minute window prior to an Agents' shift. Similarly, if an Agent at the Miami International Airport facility is scheduled to start their shift at 9:00 a.m., and they clock in at 8:25 a.m., they will be compensated for the additional 35 minutes of work because DHL's time keeping software accounts for all time in excess of 29 minutes prior to an

Agents' shift at this facility. However, if an Agent is scheduled to start their shift at 9:00 a.m., and they clock in at 8:35 a.m., they will not be properly compensated for the additional 25 minutes of work because DHL's time keeping software at this facility does not account for any time within the 30 minute window prior to an Agents' shift. Although they request and are aware of the work employees perform during these pre-shift periods, Defendants have knowingly configured DHL's time keeping system to deny compensating employees for this pre-shift time spent on the Company's behalf by systematically rounding down the employee's total time worked.

22. "Rounding" practices are permissible under the FLSA and NYLL if the "arrangement averages out so that the employees are fully compensated for all the time they actually work." 29 C.F.R. § 785.48(b). This practice is accepted provided that the time rounding is used in such a manner that will not, over a period of time, result in the failure to compensate employees properly for all the time they have actually worked.

23. At DHL, Defendants have configured their time keeping software to their benefit and to the detriment of their employees by not averaging out the rounded time. If an Agent signs out prior to 10 or 30 minutes (depending on the facility) before the end of their shift they are not compensated for the full length of their shift. Agents are only paid to the minute that they sign out. Thus, the uncompensated time that an Agent signs in prior to 10 or 30 minutes before the beginning of their shift is not averaged out at the end of their shift if they sign out early. As such, DHL's rounding practice unfairly favors Defendants versus the employees subject to the rounding policy. This rounding policy consistently and artificially reduces the total time Agents are credited with working at DHL, often by up to 29 minutes per day.

24. In addition to improper rounding policies, DHL inappropriately instructs

Directors, Supervisors, Managers and other superiors to deduct 30 minutes for meal breaks even when employees clock back in prior to the end of their 30 minute meal break. Agents are instructed that if they sign back in at any time after their 30 minute meal break ends they will be subject to disciplinary action. As such, Agents routinely sign back in prior to the end of their 30 minute meal break to avoid any potential disciplinary action. However, DHL deducts a full 30 minutes per day for every full-time Agents' meal break, regardless of whether they signed back into work before the full 30 minute meal break has elapsed and are performing work on Defendants' behalf. Thus, Agents regularly work, but are improperly uncompensated for, all time between when they sign back in from their meal break and the expiration of the automatic 30 minute meal break deduction.

25. Plaintiffs' counsel has obtained the timesheets of Agents that reflect these systemic discrepancies between the time employees worked at DHL and the "total" time they were credited for. According to one Agent's timesheet who works at the John F. Kennedy Airport facility, for example:

DATE	HOURS WORKED (minutes indicated as .xx up to .59)	HOURS CREDITED (minutes indicated as .xx up to .59)	UNCOMPENSATED TIME
2/21/2011	10.44	10.31	13 Minutes
2/22/2011	8.23	8.01	22 Minutes
2/23/2011	9.07	9.00	7 Minutes
2/24/2011	8.18	8.04	14 Minutes
2/28/2011	8.14	8.00	14 minutes
3/14/2011	8.12	8.03	9 Minutes
3/15/2011	9.11	9.00	11 Minutes
3/16/2011	9.53	9.43	10 Minutes
3/17/2011	8.10	8.00	10 Minutes

26. These and other DHL timesheets demonstrate that Agents are typically underpaid an average of 1 – 1.5 hours per week in weeks in which they worked over 40 hours. As a result, hourly-wage non-exempt Agents are routinely denied at least $1,500 in overtime compensation on a yearly basis.

Agents Perform Job Related Duties Off-The-Clock

27. Agents are regularly required to perform off-the-clock work before they are scheduled to begin work and/or after their shift is scheduled to end. These directives typically come from Directors, Supervisors, Managers and other superiors 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 preform other job related duties before they have clocked in for their shift or after they have already clocked out without being properly paid their straight wages or overtime compensation.

28. DHL inappropriately instructs Directors, Supervisors, Managers and other superiors to not compensate Agents for off-the-clock work performed for the Defendants' benefit. Due to a lack of Agents, Agents are forced to work off-the-clock to complete their assigned work or be subject to disciplinary action. As such, Agents routinely perform off-the-clock work prior to the beginning of their shift and after the end of their shift to avoid potential disciplinary action. However, DHL fails to compensate the full-time Agents for this off-the-clock work despite knowing that such off-the-clock work occurs and inures solely to the benefit of DHL. Thus, Agents regularly work, but are not properly compensated for, their off-the-clock work.

29. Plaintiffs' counsel has obtained e-mail correspondence that reflect the Agents' off-the-clock work and DHL's knowledge of the off-the-clock work. Plaintiffs' counsel has also

obtained e-mails sent from Karen Valenti, a Clearance Agent at the JFK facility. Karen Valenti's e-mails were sent on August 7, 2012 at 7:23 am, August 8, 2012 at 7:22 am and August 9, 2012 at 6:45 am.

30. Further, Plaintiffs' counsel has obtained the timesheets of Agents that likewise reflect systemic discrepancies between the time worked at DHL and the "total" time they were credited for. For example, Karen Valenti's timesheets show that her scheduled shift during the period August 6, 2012 through August 10, 2012 typically began at 8:00 am. However, as shown by the e-mails sent by her on August, 7, 8 and 9, respectively, she was performing job related duties off-the-clock and over 30 minutes prior to her scheduled shift.

31. Internal correspondence shows that DHL had knowledge of this off-the-clock work. One internal memo specifically references Karen Valenti's off-the-clock work as follows:

> Karen Valenti AM 0800-16:30 PM – come is [sic] a half hour or more and starts working and sending emails, and than [sic] clocks in at 08:00 AM, I have some copies of her email that have times around 7:30 AM. See attached two emails.

32. Likewise, one internal email reveals the following:

> I think it is just the employees taking it upon themselves to work through lunch breaks and post shift because there is so much work and not enough employees to cover the work. If the supervisor is present and not stopping it than they have to own that as well, you should know what time your employees shift starts, and they should be making sure no one is at their desk working, so Alain may want to address that point to management.
>
> Attached is a copy of three emails and a copy of Karen's time card, you can see for yourself that she works post shift everyday [sic] without getting paid for it, and its completely on her own, but I will say that your supervisor should be aware of this as they are copied in on the clearance employee email

> address, but understandably they are overwhelmed of course just like the rest of us and may not pay attention to the emails in detail. ...

33. These documents demonstrate that DHL is aware or should be aware that Agents work off-the-clock for the sole benefit of DHL and that they are not properly compensated for such work. As a result, Agents are improperly denied overtime compensation.

FAIR LABOR STANDARDS ACT COLLECTIVE ACTION ALLEGATIONS

34. The preceding paragraphs are incorporated by reference as if fully set forth herein.

35. Plaintiffs, Dionne Marshall and Lucia Gomez, bring this FLSA collective action on behalf of themselves and all other persons similarly situated pursuant to 29 U.S.C. §§ 207 and 216(b), specifically, on behalf of:

> All hourly paid non-exempt Service Agents and Senior Service Agents who worked in the JFK (New York), MIA (Miami) and LAX (Los Angeles) Gateway facilities, 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 fully compensated for time worked over forty hours per week at overtime rates; and/or (c) were not compensated for all work performed while off-the-clock (the "FLSA Collective Class").

36. 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 DHL. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the FLSA Collective Class.

37. Plaintiffs are unable to state the exact number of the class without discovery of Defendants' books and records but estimate the class to exceed several thousand if not tens of thousands of individuals.

38. Defendants improperly benefited from Plaintiffs' and the FLSA Collective Class members' uncompensated work during meal breaks and all work done prior to 10 minutes at the John F. Kennedy Airport facility and Los Angeles International Airport facility or prior to 30 minutes at the Miami International Airport facility before the beginning of their shifts. Defendants also failed to pay Plaintiffs 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.

39. Defendants' unlawful conduct has been widespread, repeated and consistent. Moreover, Defendants' conduct was willful and in bad faith and has caused significant damages to Plaintiffs and the FLSA Collective Class.

40. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs 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

41. The preceding paragraphs are incorporated by reference as if fully set forth herein.

42. Plaintiffs, Dionne Marshall and Lucia Gomez, bring this action on their 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 non-exempt Service Agents and Senior Service Agents who worked in a DHL facility 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 fully compensated for time worked over forty hours per week at overtime rates; and/or (c) were not compensated for all work performed while off-the-clock (the "New York Class").

43. 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 DHL. Also excluded are persons and entities who submit timely and otherwise proper requests for exclusion from the New York Class.

44. DHL operates numerous facilities and employs thousands of Agents in New York State 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.

45. Plaintiffs' claims are typical of the claims of other New York Class members because they were hourly-wage employees who were not compensated for work performed at the employer's request prior to the beginning of their shift and during meal periods. Plaintiffs and other New York Class members have sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs 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.

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

47. 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 Plaintiffs and the New York Class for all of the compensable time that they worked for Defendants while clocked-in;

(b) Whether Defendants failed and/or refused to pay Plaintiffs and the New York Class for all of the compensable time that they performed job related duties for Defendants while off-the-clock;

(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 Plaintiffs 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.

48. 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.

49. 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.

50. 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 Plaintiffs and the New York Class.

51. Plaintiffs intend to send notice to all members of the New York Class to the extent required by New York C.P.L.R. § 904.

FIRST CAUSE OF ACTION

VIOLATION OF THE FAIR LABOR STANDARDS ACT
(On Behalf of Plaintiffs, Dionne Marshall, Lucia Gomez and the FLSA Collective Class)

52. The preceding paragraphs are incorporated by reference as if fully set forth

herein.

53. 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 Plaintiffs and each of the members of the FLSA Collective Class.

54. Plaintiffs consent 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 Plaintiffs' Opt-in forms. As this case proceeds, it is likely that other individuals will sign consent forms and join as Plaintiffs.

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

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

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

58. By failing to compensate Plaintiffs 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*.

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

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

61. Plaintiffs, on behalf of themselves and the FLSA Collective Class, seek 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.

62. Plaintiffs, on behalf of themselves and the FLSA Collective Class, seek recovery of attorneys' 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 Plaintiffs, Dionne Marshall, Lucia Gomez and the New York Class)

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

64. 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 Plaintiffs 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.

65. 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 Plaintiffs' and the New York Class' wages that concern this lawsuit.

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

67. 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.

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

69. Plaintiffs, on behalf of themselves and the New York Class, seek 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.

70. Plaintiffs do not seek liquidated damages under the NYLL on behalf of the New York Class but reserve their right to do so.

THIRD CAUSE OF ACTION

New York Labor Law – Unpaid Overtime
(On Behalf of Plaintiffs, Dionne Marshall, Lucia Gomez and the New York Class)

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

72. 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 Plaintiffs and the members of the New York Class.

73. Defendants have failed to pay Plaintiffs 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.

74. By Defendants' knowing and/or intentional failure to pay Plaintiffs 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.

75. Due to Defendants' violations of the NYLL, Plaintiffs 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.

76. Plaintiffs do not seek liquidated damages under the NYLL on behalf of the members of the New York Class but reserve their right to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Dionne Marshall and Lucia Gomez, individually and on behalf of the FLSA Collective Class, seek 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 Plaintiffs, Dionne Marshall and Lucia Gomez, as the Representatives of the FLSA Collective Class;

C. Appointment of Plaintiffs' counsel as Lead Counsel for the FLSA Collective Class;

D. An award of damages, according to proof, including but not limited to unpaid overtime wages 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, Plaintiffs, Dionne Marshall and Lucia Gomez, individually and on behalf of the New York Class, seek the following relief:

A. Certification of this action as a class action under Rule 23 and the appointment of Plaintiffs as the representatives of the New York Class and Plaintiffs' 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and class members of damages for the amount of unpaid overtime, in addition to interest subject to proof; and

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

DEMAND FOR JURY TRIAL

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

DEMAND FOR JURY TRIAL

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

Dated: New York, New York
February 14, 2014

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