

FILED
CUSTOMER SERVICE TEAM

JAN 22 2013

SUPERIOR COURT OF NEW JERSEY
COUNTY OF HUDSON
CIVIL DIVISION

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Attorneys for Plaintiffs

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JAMIE DELEON LAGASPI,	: SUPERIOR COURT OF NEW JERSEY
	: COUNTY OF HUDSON
	: LAW DIVISION, CIVIL PART
Plaintiff,	:
	:
-against-	: COMPLAINT AND
	: <u>JURY DEMAND</u>
	:
PHIL-AM MERCHANDISING,	:
FLORENTINA SANTOS and	: Docket No. <i>L379-13</i>
OLIVER SANTOS.	:
	:
Defendants.	:
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Plaintiff, Jamie DeLeon Lagaspi, residing at 365 Union Street, Jersey City, New Jersey 07304, by way of Complaint against defendants says:

NATURE OF THE ACTION

1. Plaintiff alleges on behalf of himself and other similarly situated current and former employees, classified by Defendant as kitchen staff and comparable positions with different titles, of the Defendant and who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216(b), that they are: (i) entitled to unpaid wages from Defendant for overtime work for which they did not receive overtime premium pay, as required by law and (ii) entitled to liquidated damages pursuant to the FLSA, 29 U.S.C. §§201 *et seq.*

2. Plaintiff further complains on behalf of himself, and a class of other similarly situated current and former employees of Defendant, pursuant to Fed.R.Civ.P. 23, that they are entitled to back wages from Defendant for overtime work for which they

did not receive overtime premium pay as required by the New Jersey Wage Payment Law, N.J.S.A. 34:11-56a1, *et seq.* ("NJWPL")

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337, 1343, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

4. Venue is proper in this district pursuant to 28 U.S.C. §1391 as a substantial part of the events or omissions giving rise to the claims occurred in this District.

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

THE PARTIES

6. Plaintiff, Jamie Deleon Lagaspi ("Plaintiff"), was, at all relevant times, an adult individual, residing in Hudson County, New Jersey.

7. Plaintiff was employed by Defendant from on or about November, 2004 until, on or about June 17, 2010, as kitchen staff in New Jersey.

8. Plaintiff worked in excess of forty (40) hours per workweek, without receiving overtime compensation as required by federal and state laws.

9. Upon information and belief, Defendant, Phil-Am Merchandising, Inc. ("Phil-Am"), was and is a corporation organized and existing under the laws of the United States.

10. Upon information and belief, Defendant, Phil-Am, has a principal place of business at 683 Newark Avenue, Jersey City, New Jersey 07306.

11. Defendant was and is doing business in New Jersey and in the United States.

COLLECTIVE ACTION ALLEGATIONS

12. Pursuant to 29 U.S.C. §207, Plaintiff seeks to prosecute his FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendant in the United States at any time since on or about November, 2004 to the entry of judgment in this case (the "Collective Action Period"), who were non-exempt employees within the meaning of the FLSA and who received no compensation for overtime at rates not less than one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the "Collective Action Members").

13. This collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Defendant, upon information and belief, there are approximately 300 members of the Class during the Collective Action Period, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys or knowledge of their claims.

14. Plaintiff will fairly and adequately protect the interests of the Collective Action Members and has retained counsel that is experienced and competent in the fields of employment law and class action litigation. Plaintiff has no interest that is contrary to or in conflict with those members of this collective action.

15. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

16. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendant has acted on grounds generally applicable to all members. Among the common questions of law and fact common to Plaintiff and other Collective Action Members are:

- a. whether Defendant employed the Collective Action Members within the meaning of the FLSA;
- b. what proof of hours worked is sufficient where the employer fails in its duty to maintain time records;
- c. whether the Collective Action Members are exempt under the salesperson exemption;
- d. whether the Collective Action Members are exempt under the administrative exemption;
- e. whether Defendant failed to post or keep posted a notice explaining the minimum wages and overtime pay rights provided by the FLSA in any area where Plaintiffs are employed, in violation of 29 C.F.R. § 516.4;

- f. whether Defendant failed to pay the Collective Action Members overtime compensation for hours worked in excess of forty hours per workweek, in violation of the FLSA and the regulations promulgated there under;
- g. whether Defendant's violations of the FLSA are willful as that term is used within the context of the FLSA;
- h. whether Defendant is liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and
- i. whether Defendant should be enjoined from such violations of the FLSA in the future.

17. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

CLASS ALLEGATIONS

18. Plaintiff sues on his own behalf and on behalf of a class of persons under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

19. Plaintiff brings her NJWPL claim on behalf of all person who were employed by Defendant at any time since November_, 2004, to the entry of judgment in this case (the "Class Period"), who were non-exempt employees within the meaning of the NJWPL and have not been paid overtime wages in violation of the NJWPL (the "Class").

20. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown,

and the facts on which the calculation of that number are presently within the sole control of Defendant, upon information and belief, there are approximately 300 members of Class during the Class Period.

21. The claims of Plaintiff are typical of the claims of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy—particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against Defendant.

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

23. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in employment law and class action litigation.

24. Plaintiff has the same interests in this matter as all other members of the class and Plaintiff's claims are typical of the Class.

25. There are questions of law and fact common to the Class which predominate over any questions solely affecting the individual members of the Class, including but not limited to:

- a. whether Defendant employed the members of the Class within the meaning of the NJWL;
- b. what proof of hours worked is sufficient where employers fail in their duty to maintain time records;

- c. whether the members of the Class are exempt under the salesperson exemption;
- d. whether the members of the Class are exempt under the administrative exemption;
- e. whether Defendant failed and/or refused to pay the members of the Class premium pay for hours worked in excess of forty hours per workweek within the meaning of the NJWPL;
- f. whether Defendant is liable for all damages claimed hereunder, including but not limited to compensatory, interest, costs and disbursements and attorneys' fees; and
- g. whether Defendant should be enjoined from such violations of the NJWPL in the future.

STATEMENT OF FACTS

26. Defendant, Phil-Am employees staff to prepare food, cater food and service food in the State of New Jersey.

27. At all relevant times, Plaintiff was employed as kitchen staff for Defendant.

28. Plaintiff's duties included, but were not limited to, preparing food, catering food and servicing food by Defendant, stockroom, cashier and other administrative work.

29. Plaintiff's work was performed for the benefit of the Defendant, in the normal course of the Defendant's business and was integrated into the business of the Defendant.

30. The work performed by Plaintiff required little skill and no capital investment. His duties did not include managerial responsibilities or the exercise of independent judgment.

31. Plaintiff often worked in excess of 40 hours a week, yet Defendant willfully failed to pay Plaintiff overtime compensation of one-half times his regular hourly rate in violation of the FLSA and the NJWPL and it is Defendant's uniform policy and procedure not to pay overtime compensation to Plaintiffs.

32. Plaintiff was employed by the Defendant from in or about November, 2004 until in or about June 17, 2010. Throughout that time and, upon information belief, both before that time (throughout the Class Period) and continuing until today, Defendant has likewise employed other individuals, like the Plaintiff (the Collective Action Members/the Class) in positions that required little skill and no capital investment and their duties and responsibilities did not include any managerial responsibilities or the exercise of independent judgment. They do not have the authority to hire or fire other employees, and they are not responsible for making hiring and firing recommendations.

33. Such individuals have worked in excess of 40 hours a week, yet Defendant has likewise willfully failed to pay them overtime compensation of one-half times their regular hourly rate in violation of the FLSA and the NJWPL. As stated, the exact number of such individuals is presently unknown, but within the sole knowledge of Defendant and can be ascertained through appropriate discovery.

34. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiff's own employment, while Defendant employed Plaintiff

and the Collective Action Members/the Class, Defendant failed to maintain accurate and sufficient time records.

35. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiff's own employment, while Defendant employed Plaintiff and the Collective Action Members/the Class, Defendant failed to post or keep posted a notice explaining the minimum wage and overtime pay rights provided by the FLSA.

**FIRST CLAIM FOR RELIEF:
FAIR LABOR STANDARDS ACT**

36. Plaintiff, on behalf of himself and all Collective Action Members, reallege and incorporate by reference paragraphs 1 through 36 as if they were set forth again herein.

37. At all relevant times, Defendant has been and continues to be, an employer engaged in food service, interstate commerce for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

38. At all relevant times, Defendant employed, and/or continues to employ, Plaintiff and each of the Collective Action Members within the meaning of the FLSA.

39. Upon information and belief, at all relevant times, Defendant has had gross revenues in excess of \$500,000.

40. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. §216(b).

41. At all relevant times, Defendant had a policy and practice of refusing to pay overtime compensation to its employees for their hours worked in excess of forty hours per workweek.

42. As a result of Defendant's willful failure to compensate its employees, including Plaintiff and the Collective Action members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Defendant has violated and, continues to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

43. As a result of Defendant's failure to record, report, credit and/or compensate its employees, including Plaintiff and the Collective Action members, Defendant has failed to make, keep and preserve records with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

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

45. Due to Defendant's FLSA violations, Plaintiff, on behalf of herself and the Collective Action Members, are entitled to recover from Defendant, their unpaid overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF:
NEW JERSEY WAGE PAYMENT LAW

46. Plaintiff, on behalf of himself and the members of the Class, reallege and incorporate by reference paragraphs 1 through 36 as if they were set forth again herein.

47. At all relevant times, Plaintiff and the members of the Class were employed by Defendant within the meaning of the NJWPL.

48. Defendant willfully violated Plaintiff's rights and the rights of the members of the Class, by failing to pay them overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

49. Defendant's NJWPL violations have caused Plaintiff, and the members of the Class, irreparable harm for which there is no adequate remedy at law.

50. Due to Defendant's NJWPL violations, Plaintiff and the members of the Class are entitled to recover from Defendant their unpaid overtime compensation and damages for unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of the action and liquidated damages, pursuant to NJWPL.

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of himself and all other similarly situated Collective Action Members and members of the Class, respectfully requests that this Court grant the following relief:

- a. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of the members of the Class and appointing Plaintiff and her counsel to represent the Class;
- b. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b) and appointing Plaintiff and her counsel to

represent the Collective Action Members and tolling of the statute of limitations;

- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NJWPL;
- d. An injunction against Defendant and its officers, agents, successors, employees, representatives and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- e. An award of unpaid overtime compensation due under the FLSA and the NJWPL;
- f. An award of liquidated and/or punitive damages as a result of the Defendant's willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;
- g. An award of liquidated and/or punitive damages as a result of the Defendant's willful failure to pay overtime compensation pursuant to the NJWPL;
- h. An award of prejudgment and post-judgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- j. Such other and further relief as this Court deems just and proper.

j. Such other and further relief as this Court deems just and proper.

Dated: September 17, 2012


By: 

MARTIN V. ASATRIAN
744 Broad Street, 16th Floor
Newark, New Jersey 07102
(973) 735-0540
ATTORNEY FOR PLAINTIFF

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

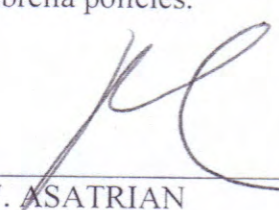
Dated: September 17, 2012


MARTIN V. ASATRIAN

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to Rule 4:10-2(b), demand is hereby made that defendants disclose to Plaintiff's Attorney whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or indemnify or reimburse for payments to be made to satisfy the judgment and provide Plaintiff's attorney with true copies of such insurance agreements or policies, including but not limited to, any and all declaration sheets. This demand shall be deemed to include and cover not only primary coverage but also any and all excess, catastrophe and umbrella policies.

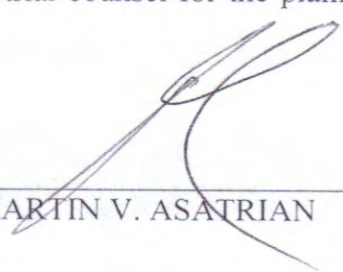
Dated: September 17, 2012


MARTIN V. ASATRIAN

DESIGNATION OF TRIAL COUNSEL

In accordance with the Federal Rules of Civil Procedure, Martin V. Asatrian, Esq. is hereby designated as trial counsel for the plaintiff in the above matter.

Dated: September 17, 2012



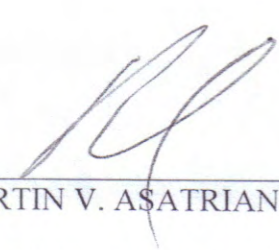
MARTIN V. ASATRIAN

CERTIFICATION

In accordance with Rule 4:5-1, I hereby certify that the matter in controversy is not subject to any other action pending in any other Court, nor a pending Arbitration proceeding, nor is there any other action or Arbitration proceeding contemplated. To the best of my knowledge, there are no other parties who should be joined in this suit at this time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 17, 2012




MARTIN V. ASATRIAN

DEMAND FOR ANSWERS TO INTERROGATORIES

In accordance with the Rule 4:17(b)(2), demand is hereby made for Answers to Interrogatories.

Dated: September 17, 2012



MARTIN V. ASATRIAN