

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARCOS CASTILLA, on behalf of himself, individually,  
and on behalf of all others similarly-situated,

**COMPLAINT**

Plaintiff,

**Docket No.:** 1:18-cv-3838

-against-

Jury Trial Demanded

KNS BUILDING RESTORATION, INC., and  
DENNIS DOCETI, individually,

Defendants.

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MARCOS CASTILLA (“Plaintiff”), on behalf of himself, individually, and on behalf of all others similarly-situated, (collectively as “FLSA Plaintiffs” and/or “Rule 23 Plaintiffs” as those terms are defined below), by and through his attorneys, BORRELLI & ASSOCIATES, P.L.L.C., as and for his Complaint against KNS BUILDING RESTORATION, INC. (“KNS Building”), and DENNIS DOCETI (“Doceti”), individually, (together, where appropriate, as “Defendants”), alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters as follows:

**NATURE OF THE CASE**

1. This is a civil action for damages and equitable relief based upon willful violations that Defendants committed of Plaintiff’s rights guaranteed to him by: (i) the overtime provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160; N.Y. Comp. Codes R. & Regs. (“NYCCRR”) tit. 12, § 142-2.2; (iii) the NYLL’s requirement that employers furnish employees with wage statements containing specific categories of accurate information on each payday, NYLL § 195(3);

(iv) the NYLL's requirement that employers furnish employees with a wage notice at the time of hire containing specific categories of accurate information, NYLL § 195(1); and (v) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants - - a Suffolk County-based roofing and construction company and his direct supervisor - - as a construction worker from January 2013 until September 2016. As described below, throughout his employment, Defendants willfully failed to pay Plaintiff the wages lawfully due to him under the FLSA and the NYLL. Specifically, Defendants required Plaintiff to work, and Plaintiff did in fact work, in excess of forty hours for each week or virtually each week throughout his employment, yet Defendants failed to compensate Plaintiff at the rate of one and one-half times his regular rate of pay for all hours that he worked in excess of forty each week, and instead paid him at his straight-time rate of pay for all hours worked.

3. Additionally, Defendants failed to provide Plaintiff with any wage statements on each payday or with any wage notice at the time of Plaintiff's hire, let alone accurate ones, both as the NYLL requires.

4. Defendants paid and treated all of their construction workers in the same manner.

5. Accordingly, Plaintiff brings this lawsuit against Defendants pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of Defendants' willful violations of the FLSA. Plaintiff brings his claims under the NYLL on behalf of himself, individually, and on behalf of any FLSA Plaintiff, as that term is defined below, who opts into this action.

6. Plaintiff also brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure ("FRCP") 23, on behalf of himself, individually, and on behalf of all other persons

similarly-situated during the applicable NYLL limitations period who suffered damages as a result of Defendants' violations of the NYLL and the supporting New York State Department of Labor regulations.

### **JURISDICTION AND VENUE**

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq.* The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1367 over all claims arising under New York law.

8. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claims for relief occurred within this judicial district.

### **PARTIES**

9. At all times during Plaintiff's employment, Plaintiff worked for Defendants in New York and was an "employee" entitled to protection as defined by the FLSA, the NYLL, and the NYCCRR.

10. At all times during Plaintiff's employment, Defendant KNS Building was and is a New York corporation located at 52-54 72nd Street, Maspeth, New York 11378.

11. At all times during Plaintiff's employment, Defendant Doceti was a manager of Defendant KNS Building. In that role, Defendant Doceti personally managed and oversaw the day-to-day operations of Defendant KNS Building and was ultimately responsible for all matters with respect to determining employees' rates and methods of pay and hours worked. Furthermore, Defendant Doceti had and exercised the power to hire and fire and approve all personnel decisions with respect to Defendant KNS Building's employees, and personally made the decision to hire and fire Plaintiff and directly supervised Plaintiff's work.

12. At all times during Plaintiff's employment, Defendants were "employers" within the meaning of the FLSA and the NYLL. Additionally, Defendant KNS Building's qualifying annual business exceed \$500,000.00, and KNS Building was and is engaged in interstate commerce within the meaning of the FLSA, as it employed two or more employees, accepted payments in cash that naturally moved across state lines, accepted credit cards as a form of payment based on cardholder agreements with out-of-state companies, and bought and used construction materials, such as tools, equipment, and paint supplies, from outside of New York, the combination of which subjects Defendants to the FLSA's overtime requirements as an enterprise.

### **COLLECTIVE ACTION ALLEGATIONS**

13. Plaintiff seeks to bring this suit to recover from Defendants unpaid overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 216(b), individually, on his own behalf, as well as on behalf of those in the following collective:

Current and former construction workers or those who worked in other similar positions, who at any time during the applicable FLSA limitations period performed any work for KNS Building and/or Doceti, and who consent to file a claim to recover damages for overtime compensation that is legally due to them ("FLSA Plaintiffs").

14. Defendants treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: (1) performed similar tasks, as described in the "Background Facts" section below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours in a workweek; and (5) were not paid

the required one and one-half times their respective regular rates of pay for all hours worked per workweek in excess of forty.

15. At all relevant times, Defendants are and have been aware of the requirements to pay Plaintiff and all FLSA Plaintiffs at an amount equal to the rate of one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet they purposefully and willfully chose not to do so.

16. Thus, Plaintiff and all FLSA Plaintiffs are victims of Defendants' pervasive practice of willfully refusing to pay their employees overtime compensation for all hours worked per workweek above forty, in willful violation of the FLSA.

### **RULE 23 CLASS ALLEGATIONS**

17. In addition, Plaintiff seeks to maintain this action as a class action pursuant to FRCP 23(b)(3), individually, on his own behalf, as well as on behalf of those who are similarly situated who, during the applicable limitations period, were subjected to violations of the NYLL and the NYCCRR.

18. Under FRCP 23(b)(3), Plaintiff must plead that:

- a. The class is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class that predominate over any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;
- d. The representative will fairly and adequately protect the class; and
- e. A class action is superior to other methods of adjudication.

19. Plaintiff seeks certification of the following FRCP 23 class:

Current and former construction workers, or those working in a similar role, who during the applicable NYLL limitations period,

performed any work for Defendants in New York (“Rule 23 Plaintiffs”).

Numerosity

20. During the previous six years Defendants have, in total, employed at least forty employees that are putative members of this class.

Common Questions of Law and/or Fact

21. There are questions of law and fact common to each and every Rule 23 Plaintiff that predominate over any questions solely affecting individual members of the FRCP 23 class, including but not limited to the following: (1) the duties that Defendants required and require each Rule 23 Plaintiff to perform; (2) the manner of compensating each Rule 23 Plaintiff; (3) whether Rule 23 Plaintiffs worked in excess of forty hours per week; (4) whether Defendants failed to pay Rule 23 Plaintiffs proper overtime compensation for all hours worked in excess of forty in a week; (5) whether Defendants furnished Rule 23 Plaintiffs with accurate wage statements on each payday containing the information required by NYLL § 195(3); (6) whether Defendants furnished Rule 23 Plaintiffs with an accurate wage notice at the time of hire containing the information required by NYLL § 195(1); (7) whether Defendants kept and maintained accurate records of hours worked by the Rule 23 Plaintiffs; (8) whether Defendants kept and maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs for each hour worked; (9) whether Defendants have any affirmative defenses to any of the Rule 23 Plaintiffs’ claims; (10) whether Defendants’ actions with respect to the Rule 23 Plaintiffs were in violation of the NYLL and supporting regulations; and (11) if so, what constitutes the proper measure of damages.

Typicality of Claims and/or Defenses

22. As described in the “Background Facts” section below, Defendants employed Plaintiff and Rule 23 Plaintiffs within the meaning of the NYLL. Plaintiff’s claims are typical of

the claims of the Rule 23 Plaintiffs whom he seeks to represent, as the Rule 23 Plaintiffs work and/or have worked for Defendants as construction workers, and Defendants did not: pay them overtime pay for all hours worked in a week over forty; and/or provide them with accurate wage statements on each payday; and/or provide them with an accurate wage notice at the time of hire. Plaintiff and the Rule 23 Plaintiffs enjoy the same statutory rights under the NYLL to receive overtime wages for all hours worked each week over forty, and to be furnished with accurate wage statements on each payday and an accurate wage notice at the time of hire. Plaintiff and the Rule 23 Plaintiffs have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL and supporting regulations. Plaintiff and the Rule 23 Plaintiffs all have suffered injury, including lack of compensation or under compensation, due to Defendants' common policies, practices, and patterns of conduct. Thus, Plaintiff's claims and/or Defendants' defenses to those claims are typical of the Rule 23 Plaintiffs' claims and Defendants' defenses to those claims.

Adequacy

23. Plaintiff, as described below, worked the same or similar hours as the Rule 23 Plaintiffs throughout his employment with Defendants. Defendants did not pay Plaintiff overtime for all hours worked over forty in a week, and did not furnish Plaintiff with accurate wage statements on each payday or with an accurate wage notice at the time of hire, which is substantially similar to how Defendants paid and treated the Rule 23 Plaintiffs. Plaintiff fully anticipates providing discovery responses and testifying under oath as to all of the matters raised in this Complaint and that will be raised in Defendants' Answer. Thus, Plaintiff would properly and adequately represent the current and former employees whom Defendants have subjected to the treatment alleged herein.

24. Additionally, Plaintiff's counsel has substantial experience in this field of law.

Superiority

25. Plaintiff has no, or very few, material facts relating to the Rule 23 Plaintiffs' claims that are atypical of those of the putative class. Indeed, at all relevant times herein, Defendants treated Plaintiff identically, or at the very least, substantially similarly, to the Rule 23 Plaintiffs.

26. Any lawsuit brought by any construction worker of the Defendants would be identical to a suit brought by any other similar employee for the same violations as alleged herein. Thus, separate litigation would risk inconsistent results.

27. Accordingly, this means of protecting Rule 23 Plaintiffs' rights is superior to any other method, and this action is properly maintainable as a class action under FRCP 23(b)(3).

**BACKGROUND FACTS**

28. Defendant KNS Building is a roofing and construction company located in Maspeth, New York.

29. Defendant Doceti was and is a manager and day-to-day overseer of Defendant KNS Building who personally supervised Plaintiff during Plaintiff's employment with Defendants.

30. Defendants employed Plaintiff as a construction worker from about January 2013 until about September 2016.

31. From January 2013 until approximately June 2014, Plaintiff's duties primarily involved performing demolition work in the Bronx.

32. From approximately July 2014 until September 2016, Plaintiff's primary duties were painting and construction of roofing and installing insulation in Brooklyn.

33. At all times throughout Plaintiff's employment, Defendants required Plaintiff to work, and Plaintiff primarily did work, six days per week, from Monday through Saturday, from



7:00 a.m. until 3:30 p.m. with one half hour break each day, for a total of forty-eight hours worked each workweek.

34. From January 2013 until on or about December 31, 2014, Defendants paid Plaintiff \$10.00 per hour for all hours worked per week, including those hours worked in excess of forty. Subsequently, from on or about January 1, 2015 until on or about May 31, 2016, Defendants paid Plaintiff \$12.50 per hour for all hours worked per week, including those hours worked in excess of forty. Finally, from on or about June 1, 2016 until his termination in September 2016, Defendants paid Plaintiff \$15.00 per hour for all hours worked per week, including those hours worked in excess of forty.

35. At all times throughout his employment, Defendants failed to pay Plaintiff at the rate of one and one-half times his regular hourly rate of pay for any hours that Plaintiff worked each week over forty.

36. For example, during the week of November 4 through November 10, 2013, Defendants required Plaintiff to work, and Plaintiff did work forty-eight hours, from 7:00 a.m. until 3:30 p.m. from Monday to Saturday, with a break of thirty minutes during each day. For his work that week, Defendants paid Plaintiff at the rate of \$10.00 per hour for all hours worked, including the eight hours that Plaintiff worked in excess of forty, and thus did not pay Plaintiff at the rate of time and one-half his regular rate, or \$15.00, for those overtime hours.

37. Defendants paid Plaintiff on a weekly basis.

38. On each occasion when Defendants paid Plaintiff, Defendants failed to provide Plaintiff with any wage statements, let alone ones that accurately listed, *inter alia*, Plaintiff's actual hours worked for that week and/or his straight and overtime rates of pay for all hours worked.

39. Defendants also did not provide Plaintiff with any wage notice at the time of his hire, let alone one that accurately listed any of the following: Plaintiff's regular and overtime rates of pay and basis thereof; his regular payday; his employers' name, physical address of their main office, mailing address if it differs, and telephone number; and any "doing business as" names used by his employer.

40. Defendants treated Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs in the manner described above.

41. Each hour that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs worked was for Defendants' benefit.

42. Defendants acted in the manner described herein so as to minimize their overhead while maximizing profits.

**FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS**

*Unpaid Overtime under the FLSA*

43. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

44. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for all hours worked exceeding forty in a workweek.

45. As described above, Defendants are employers within the meaning of the FLSA, while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.

46. As also described above, Plaintiff and FLSA Plaintiffs worked in excess of forty hours in a workweek, yet Defendants failed to compensate them in accordance with the FLSA's overtime provisions.

47. Defendants willfully violated the FLSA.

48. Plaintiff and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

49. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for Defendants' violations of the FLSA's overtime provisions.

**SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS**

**Unpaid Overtime under the NYLL and the NYCCRR**

50. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

51. NYLL § 160 and 12 NYCCRR § 142-2.2 require employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for all hours worked exceeding forty in a workweek.

52. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL and the NYCCRR.

53. As also described above, Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, worked in excess of forty hours in a workweek, yet Defendants failed to compensate them in accordance with the NYLL's and the NYCCRR's overtime provisions.

54. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

55. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are also entitled to liquidated damages, interest, attorneys' fees for Defendants' violations of the NYLL's and NYCCRR's overtime provisions.

**THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS**  
**Failure to Furnish Proper Wage Statements in Violation of the NYLL**

56. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

57. N.Y. Lab. Law § 195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.

58. As described above, Defendants are employers within the meaning of the NYLL, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL.

59. As also described above, Defendants, on each payday, failed to furnish Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, with any wage statements on each payday, let alone accurate wage statements containing all of the criteria required under the NYLL.

60. Prior to February 27, 2015, pursuant to N.Y. Lab. Law § 198(1-d), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, in the amount of \$100.00 for each workweek that the violation occurred, up to a statutory cap of \$2,500.00.

61. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, in the amount of \$250.00 for each workday that the violation occurred, up to a statutory cap of \$5,000.00.

**FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS**  
**Failure to Furnish Proper Wage Notices in Violation of the NYLL**

62. Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

63. NYLL § 195(1) requires that employers provide employees with a wage notice at the time of hire containing accurate, specifically enumerated criteria.

64. As described above, Defendants are employers within the meaning of the NYLL, while Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, are employees within the meaning of the NYLL.

65. As also described above, Defendants failed to furnish Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, with any wage notice at their time of hire, let alone one accurately containing all of the criteria required under the NYLL.

66. Prior to February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, in the amount of \$50.00 for each workweek after the violation initially occurred, up to a statutory cap of \$2,500.00.

67. On or after February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, Rule 23 Plaintiffs, and any FLSA Plaintiff who opts-in to this action, in the amount of \$50.00 for each workday after the violation initially occurred, up to a statutory cap of \$5,000.00.

**DEMAND FOR A JURY TRIAL**

68. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand a trial by jury on all claims in this action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand judgment against Defendants as follows:

a. A judgment declaring that the practices complained of herein are unlawful and in willful violation of the aforementioned United States and New York State laws;

b. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

c. An order restraining Defendants from any retaliation against Plaintiff, FLSA Plaintiffs, and/or Rule 23 Plaintiffs for participation in any form in this litigation;

d. Designation of this action as an FLSA collective action on behalf of Plaintiff and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA Plaintiffs, 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 tolling of the statute of limitations;

e. Certification of the claims brought in this case under the NYLL and NYCCRR as a class action pursuant to FRCP 23;

f. All damages that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs have sustained as a result of Defendants' conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs would have received but for Defendants' unlawful payment practices;

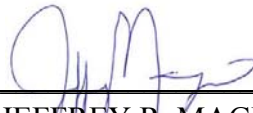
- g. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;
- h. Designation of Plaintiff and his counsel as class/collective action representatives under the FRCP and the FLSA;
- i. Awarding Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs their reasonable attorneys' fees, as well as their costs and disbursements incurred in connection with this action, including expert witness fees and other costs, and an award of a service payment to Plaintiff;
- j. Pre-judgment and post-judgment interest, as provided by law; and
- k. Granting Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs such other and further relief as this Court finds necessary and proper.

Dated: New York, New York  
July 2, 2018

Respectfully submitted,

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By:

  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims KNS Building Restoration Owes Employees Unpaid OT Pay](#)

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