

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BLANCA GUERRERO, individually and on behalf  
of others similarly situated,

Case No.: 17-cv-4238

*Plaintiffs,*

-against-

**COMPLAINT**

MIRACLE MILE AUTO WASH, LLC d/b/a  
MANHASSET HAND WASH & DETAIL CENTER  
and SCOTT "DOE",

**COLLECTIVE ACTION UNDER  
29 U.S.C. §216 (b) and RULE 23  
CLASS ACTION**

*Defendants.*

-----X

Plaintiff Blanca Guerrero ("Plaintiff") individually and on behalf of others similarly situated, by and through her attorneys, Frank & Associates, P.C., bring this action against Defendant Miracle Mile Auto Wash, LLC d/b/a Manhasset Hand Wash & Detail Center ("Manhasset Hand Wash") and Defendant Scott "Doe" (collectively "Defendants") respectfully allege as follows:

**INTRODUCTION**

1. Plaintiff was a non-exempt car wash employee who was denied overtime pay and spread of hours pay during those weeks in which her regular rate of pay fell below the minimum wage rate prescribed by law. Plaintiff alleges the Defendants thereby violated the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, et seq. ("FLSA"), and she is entitled to recover from Defendants: (a) unpaid overtime compensation and minimum wage at the required rate; (b) liquidated damages of 100%; (c) pre-and post-judgment interest on the amounts determined to be owing; and (d) attorneys' fees and costs.

2. Plaintiff further alleges that, pursuant to New York Labor Law ("NYLL"), she is entitled to recover from Defendants in addition to the sums due in Section 1, above "spread of hours" premium for each day she worked in excess of ten (10) hours a day; liquidated damages as

described above, civil penalties pursuant to the NYLL and the New York State Wage Theft Prevention Act; pre-and post-judgment interest; and attorneys' fees and costs of this litigation.

3. Since Defendants willfully failed and refused to provide Plaintiff with Federal and State mandated contributions for required employment benefits such as Social Security, Medicare and Unemployment Compensation. Plaintiff is entitled to recover all compensatory damages and punitive damages in amounts to be determined at trial.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over all federal law claims pursuant to 29 U.S.C. §216(b), 28 U.S.C. § 1331 and supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391, because the events or omissions giving rise to the claim for unlawful employment practices occurred in Nassau County, New York.

### **PARTIES**

#### **The Plaintiff**

6. At all times, relevant to the Complaint, Plaintiff Blanca Guerrero ("Plaintiff Guerrero") was and is currently a resident of Nassau County, New York.

7. At all times relevant to the Complaint, Plaintiff was employed by Defendants as a car washer.

8. At all times relevant to the Complaint, Plaintiff was an "employee" within the meaning of FLSA 29 U.S.C. § 203(e) and NYLL § 190(2).

**The Defendants**

9. Defendant Manhasset Hand Wash (“Manhasset”) was and still is a domestic business corporation incorporated under the laws of the State of New York, with its primary place of business at 201 E. Shore Road, Manhasset, NY 11030.

10. At all times relevant to the Complaint, Defendant Manhasset was an “employer” within the meaning of FLSA, 29 U.S.C. §203(d) and NYLL §190(3).

11. At all relevant times, Defendant Manhasset was and is “an enterprise engaged in interstate commerce” within the meaning of the FLSA.

12. At all relevant times, Defendant Manhasset Hand Wash has and has had employees engaged in commerce or in the production of goods for commerce and handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

13. At all relevant times, Defendant Manhasset has and has had annual gross volume of sales in excess of \$500,000.

14. Defendant Scott “Doe” owns/operates Manhasset.

15. Defendant Scott “Doe” has authority over personnel decisions at Manhasset, including the power to direct the work of employees, hire and fire employees and determine employee compensation.

16. At all times relevant to the Complaint, Defendant Scott “Doe” was an “employer” within the meaning of FLSA, 29 U.S.C. §203(d) and NYLL §190(3).

**FACTUAL ALLEGATIONS**

17. Plaintiff was employed by Defendants' car wash from February 2014 to November 6, 2016. She performed such non-exempt duties as washing and cleaning the exterior and vacuuming the interior of vehicles.

18. Throughout her employment with Defendants, Plaintiff regularly worked six (6) days per week, with a regular day off on Wednesday.

19. Plaintiff worked from 7:40 a.m. to 6:20 p.m. on Monday, Tuesday, Thursday, Friday and Saturday, and 8:00 a.m. to 5:00 p.m. on Sundays for a total of approximately sixty-two (62) hours each week.

20. Plaintiff was provided a twenty (20) minute meal break each day, but when she was busily engaged, would work through her lunch break.

21. From the commencement of her employment until the end of 2014, Plaintiff was paid in cash at a rate of \$6.50 per hour for all hours worked, less than the mandated minimum wage.

22. From the first workday of 2015 until the end of her employment on November 6, 2016, Plaintiff was paid by check at a rate of \$7.50 per hour for the first forty (40) hours that she worked each week. During that same period, Plaintiff was paid, in cash, at a rate of \$7.50 per hour for each hour that she worked in excess of forty (40) each week.

23. Throughout her employment, Plaintiff received varying amounts of tips from customers, which ranged from approximately \$5 per day to \$25 per day. She was not advised, either orally, or in writing, that a tip allowance would be taken to reduce her wages.

24. Thus, Plaintiff was denied the full minimum wage and she was not informed, either orally or in writing, that a credit would reduce her hourly wages below the minimum wage.

25. Plaintiff regularly worked more than forty (40) hours per workweek. Defendants failed to compensate Plaintiff for time worked in excess of forty (40) hours per week at a rate of at least one and one-half times her regular hourly rate, throughout the entire term of her employment.

26. Defendants willfully failed to pay Plaintiff one additional hour pay at the statutory minimum wage rate for each day that the length of the interval between the beginning and end of her workday exceeded ten (10) as required by 12 NYCRR §142-2.4.

27. Defendants did not provide Plaintiff with complete, true and accurate weekly wage statements listing her hourly rate, the overtime hours she worked, her gross income, deductions from pay, and/or additions to pay and net wages as required by law.

28. Defendants did not provide Plaintiff with written notice, in her primary language, of her rate of pay, the basis thereof, any allowances claimed by the employer, the employer's regular pay day, the name of the employer, including any "doing business names," the employer's address and the employer's telephone number at the time of Plaintiff's hire.

29. Defendants willfully disregarded and purposefully evaded record keeping requirements of the FLSA and the New York Labor Law by failing to maintain accurate records of the hours worked by and wages paid to Plaintiff.

30. By employing Plaintiff, Defendants had a fiduciary duty to Plaintiff. Specifically, Defendants had a fiduciary duty to pay Plaintiff proper wages for all work performed for Defendants' benefit and to make proper contributions on Plaintiff's behalf to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare for all hours worked.

31. Plaintiff commenced her employment with Defendants with the expectation that proper contributions to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare would be made on his behalf. However, for the first year of Plaintiff's employment, Defendants failed to make any such contributions. Although Defendants made some contributions starting in 2015, Defendants failed entirely to make any contributions for the hours worked by Plaintiff in excess of forty (40) each workweek.

32. In fact, rather than making these contributions, Defendants converted the contributions for their own use, excluded Plaintiff from the use and enjoyment of them and subjected Plaintiff to harm.

33. By converting these contributions, Defendants were unjustly enriched.

34. Defendants breached their fiduciary duty to Plaintiff by failing to make proper contributions on his behalf for the work he performed.

35. Further, Defendants willfully failed to pay proper payroll taxes on Plaintiff's wages in violation of Federal and State law.

### **COLLECTIVE ACTION CLAIMS**

36. Plaintiff brings her FLSA claims as a collective action, pursuant to 29 U.S.C. § 216(b) on behalf of all similarly situated non-exempt persons who are or were employed by Defendants within three years from the filing of this Complaint ("FLSA Collective").

37. At all relevant times, Plaintiff, and other members of the FLSA Collective, have had substantially similar job requirements and pay provisions.

38. At all relevant times, Plaintiff, and other members of the FLSA Collective, have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum wage and to pay them at least one and

one-half times the greater of either their regular rate or the minimum wage for every hour of work in excess of forty (40) hours per workweek.

39. The claims of Plaintiff stated herein are similar to those of the Defendants' other employees.

40. The FLSA Collective is readily identifiable and locatable through the use of Defendants' records. The FLSA Collective should be notified of and allowed to opt-in to this action pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of minimum wage and overtime pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld by Defendants.

#### **CLASS ACTION ALLEGATIONS**

41. Plaintiff brings her claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated non-exempt employees of Defendants who were: (1) not paid minimum wage for all hours worked, (2) not paid overtime wages for all hours worked in excess of forty (40) each workweek, (3) not paid a "spread of hours" premium within six years from the filing of the Complaint, (4) not given proper pay rate notices, (5) not given accurate wage statements and (6) on whose behalf contributions were not made to Federal and State mandated benefit programs.

42. Plaintiff is a member of the Class she seeks to represent.

43. Plaintiff reserves the right to amend the Class definition based on discovery.

#### **A. Efficiency of Class Prosecution of Class Claims**

44. Upon information and belief, there are many current and former employees who are similarly situated to Plaintiff, who have been underpaid in violation of the FLSA and NYLL.

The named Plaintiff is a representative of those other workers and is acting on behalf of the Defendants' current and former employees' interest as well as her own interest in bringing this action.

45. Certification of this class is the most efficient and economical means for resolving questions of law and fact that are common to Plaintiff and members of the proposed class.

46. Plaintiff's individual claims and their resolution will resolve the common questions of the proposed class.

47. A class action is superior to other available methods for the fair and efficient adjudication of this litigation, particularly in the context of a wage and hour litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of the efforts and expense that numerous individual actions engender. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources. However, treating the claims as a class action would result in a significant savings of these costs. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class Members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. Additionally, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.



### **B. Numerosity and Impracticability of Joinder**

48. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

49. The Rule 23 Class Members are readily ascertainable. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants.

50. Unless the Court promptly issues such notice, persons similarly situated to Plaintiff, who have been unlawfully deprived of overtime pay in violation of the FLSA and NYLL, and spread of hours pay in violation of the NYLL, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by the Defendants.

51. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity which allows for the vindication of their rights while eliminating or reducing those risks.

### **C. Common Questions of Law and Fact**

52. The adjudication of Plaintiff's claims will directly result in the adjudication of numerous questions of law and fact common to the members of the proposed class.

53. These common issues include, but are not limited to; (a) whether Defendants unlawfully failed to pay proper overtime compensation for hours worked in excess of forty (40) per week in violation of and within the meaning of the FLSA and NYLL; (b) whether Defendants unlawfully failed to pay Federal and New York State minimum wage (c) whether Defendants have failed to keep true and accurate time records for all hours worked by Plaintiff and the Rule 23

Class; (d) whether Defendants failed and/or refused to pay Plaintiffs and the Rule 23 Class spread-of-hours pay when their spread of hours exceeded ten (10) hours; (e) the nature and extent of Rule 23 Class-wide injury and the appropriate measure of damages for the class; and (f) whether Defendants' general practice of failing and/or refusing to pay Plaintiff and the Rule 23 Class proper compensation was done willfully or with reckless disregard of the federal and state wage and hour laws.

54. The policies, procedures, and practices implemented by Defendants were applied to all members of the proposed class.

#### **D. Typicality of Claims and Relief Sought**

55. The claims of Plaintiff are typical of the claims of the Rule 23 Class she seeks to represent. Plaintiff's claims are typical of those claims which could be alleged by any member of the Rule 23 Class, and the relief sought is typical of the relief which would be sought by each member of the proposed class in separate actions.

56. Plaintiff seeks the following relief for her individual claims and for the claims of the members of the proposed class: (1) unpaid overtime wages for all hours worked in excess of forty (40) hours per week at a rate of one and one-half times his standard rate of pay; (2) unpaid minimum wages; (3) unpaid spread-of-hours payments at the basic minimum wage rate for each day their "spread of hours" exceeded ten (10); (4) an equal amount of liquidated damages; (5) damages for Defendants' failure to provide proper and accurate notice of Plaintiff's pay rate and (6) damages for Defendants' failure to make contributions to Federal and State mandated benefit programs.

#### **E. Adequacy of Representation**

57. Plaintiff's interests are akin to those of the members of the proposed class.

58. Plaintiff is willing and able to represent the members of the proposed class and will fairly and adequately represent and protect the interest of the Rule 23 Class.

59. Plaintiff has retained counsel competent and experienced in complex class actions and in labor and employment litigation for over fifty (50) years. Plaintiff's counsel can competently litigate the individual and class claims sufficiently to satisfy Rule 23(a)(4) of the Federal Rules of Civil Procedure.

**FIRST CAUSE OF ACTION**  
**Failure to Pay Overtime in Violation of the FLSA**

60. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

61. Defendants required Plaintiff and other similarly situated employees to work in excess of forty (40) hours each week and willfully failed to compensate Plaintiff and other similarly situated employees for the time worked in excess of forty (40) hours each week at a rate of at least one and one-half times the greater of their regular hourly rate or the minimum wage in violation of the FLSA.

62. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiff and other similarly situated employees overtime wages.

63. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

64. As a result of Defendants' willful and unlawful failure to pay Plaintiff and other similarly situated employees overtime wages, Plaintiff and other similarly situated employees are entitled to recover their unpaid overtime wages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**  
**Failure to Pay Minimum Wage in Violation of the FLSA**

65. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

66. Defendants, in violation of 29 U.S.C. § 207(a)(1), paid Plaintiff and similarly situated employees at a rate less than the applicable minimum wage.

67. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiff and other similarly situated employees minimum wage.

68. As a result of Defendants' willful and unlawful failure to pay Plaintiff and other similarly situated employees at least minimum wage, Plaintiff and other similarly situated employees are entitled to recover their unpaid minimum wages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

**THIRD CAUSE OF ACTION**  
**Failure to Pay Overtime in Violation of the NYLL**

69. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

70. Defendants required Plaintiff and the Rule 23 Class members to work in excess of forty (40) hours each week and willfully failed to compensate Plaintiff and the Rule 23 Class Members for the time worked in excess of forty (40) hours each week at a rate of at least one and one-half times the greater of their regular hourly rate or the minimum wage in violation of the NYLL.

71. Defendants willfully violated the NYLL by knowingly and intentionally failing to pay Plaintiff and the Rule 23 Class overtime wages.

72. Due to Defendants' violation of the NYLL, Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants their unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

**FOURTH CAUSE OF ACTION**  
**Failure to Pay Spread of Hours Wages in Violation of the NYLL**

73. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

74. Defendants willfully failed to pay Plaintiff and the Rule 23 Class Members additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which they worked more than ten (10) hours.

75. By Defendants failure to pay Plaintiff and the Rule 23 Class Members spread-of-hours pay, Defendants willfully violated the NYLL and its supporting regulations including, but not limited to, 12 N.Y.C.R.R. § 142-2.4.

76. Due to Defendants' violation of the NYLL and its supporting regulations Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants their unpaid "spread of hours" premium, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

**FIFTH CAUSE OF ACTION**  
**Failure to Pay Minimum Wage in Violation of the NYLL**

77. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

78. Defendants, in violation of NYLL §652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff and the Rule 23 Class less than the minimum wage.

79. Defendants willfully violated the NYLL by knowingly and intentionally failing to pay Plaintiff and the Rule 23 Class minimum wage.

80. Due to Defendants' violation of the NYLL and its supporting regulations Plaintiff and the Rule 23 Class Members are entitled to recover from Defendants their unpaid minimum wages, liquidated damages, reasonable attorneys' fees and costs of this action, and pre-judgment and post-judgment interest.

**SIXTH CAUSE OF ACTION**

**Failure to Provide Accurate Wage Statements in Violation of NYLL § 195(3)**

81. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

82. Defendants failed to provide Plaintiff and the Rule 23 Class with an accurate statement of, *inter alia*, their regular rate of pay, their overtime rate of pay, their hours worked, her regular payday, the name, address and telephone number of the employer, and other information required by NYLL § 195(3).

83. Defendants' violations of the NYLL and its supporting regulations entitle Plaintiff and the Rule 23 Class Members to recover damages of \$250 per work day, up to a maximum of \$5,000, and attorneys' fees and costs.

**SEVENTH CAUSE OF ACTION**

**Failure to Provide Notice of Pay Rate in Violation of NYLL § 195(1)**

84. Plaintiff repeats and re-alleges each and every allegation in the preceding paragraphs as if set forth fully herein.

85. Defendants failed to provide Plaintiff and the Rule 23 Class with notice, in English and in their primary language, of their rate of pay, the basis thereof, the employer's regular pay day, the name, address and telephone number of the employer and other information required by NYLL § 195(1).

86. Defendants' violations of the NYLL and its supporting regulations entitle Plaintiff and the Rule 23 Class Members to recover damages of \$50 per work day, up to a maximum of \$5,000, and attorneys' fees and costs.

**EIGHTH CAUSE OF ACTION**  
**Conversion**

87. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

88. Defendants unlawfully converted benefits and contributions that should have been made to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare on Plaintiff's and on the Rule 23 Class' behalf.

89. Defendants intentionally, purposely and fraudulently converted these funds for their own benefit.

90. Defendants intended to fraudulently convert these contributions for the purpose of exploitation for their own financial benefit and, in essence, to steal Plaintiff's and the Rule 23 Class' money.

91. Defendants interfered with Plaintiff's and the Rule 23 Class' right to these contributions, and continue to possess these funds to this day.

92. Plaintiff and the Rule 23 Class are entitled to recover from Defendants their actual, compensatory, expectation, and punitive damages in an amount to be determined at trial, but in any event, no less than \$1,000,000.

**NINTH CAUSE OF ACTION**

**Fraud**

93. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

94. Defendants fraudulently and intentionally withheld benefits and contributions to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare, which should have been made on Plaintiff's and the Rule 23 Class' Members' behalf.

95. Defendants intended to fraudulently withhold these contributions for the purpose of exploitation for their own financial benefit and, in essence, to steal Plaintiff's and the Rule 23 Class Members' money.

96. Plaintiff and the Rule 23 Class justifiably relied on Defendants, as their employer, that proper contributions would be made to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare on their behalf.

97. Upon information and belief, Defendants represented to Plaintiff and the Rule 23 Class that these contributions would be made on Plaintiff's and the Rule 23 Class' behalf for all hours worked. As a result of Defendants' misrepresentations, Plaintiff and the Rule 23 Class suffered financially.

98. As a result of Defendants' actions, Plaintiff and the Rule 23 Class are entitled to recover from Defendants their actual, compensatory, expectation, and punitive damages in an amount to be determined at trial, but in any event, no less than \$1,000,000.



**TENTH CAUSE OF ACTION**  
**Breach of Fiduciary Duty**

99. Plaintiff hereby repeats and realleges each and every allegation in the preceding paragraphs as if set forth fully herein.

100. Defendants had a fiduciary duty to Plaintiff and the Rule 23 Class as their employer to ensure that proper contributions were made to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare.

101. Defendants breached their duty to Plaintiff and the Rule 23 Class when they failed to make such contributions.

102. Due to Defendants' breach, Plaintiff and the Rule 23 Class suffered actual damages, including but not limited to, not having contributions made to Social Security, Workers' Compensation, Unemployment Insurance, New York Disability Insurance, and Medicare.

103. As a result of Defendants' actions, Plaintiff and the Rule 23 Class are entitled to recover from Defendants their actual, compensatory, expectation, and punitive damages in an amount to be determined at trial, but in any event, no less than \$1,000,000.

**PRAYER FOR RELIEF**


**WHEREFORE**, Plaintiff, individually and on behalf of others and all similarly situated Collective Action Members and Class members, respectfully request that this Court grant the following relief:

- (a) An award of unpaid overtime compensation due under the FLSA and New York Labor Law;
- (b) An award of unpaid minimum wages due under the FLSA and New York Labor Law;
- (c) An award of "spread of hours" premium due under the New York Labor Law;

- (d) An award of liquidated damages as a result of Defendant's failure to pay overtime compensation pursuant to 29 U.S.C. §216.
- (e) An award of liquidated damages as a result of Defendants' failure to pay overtime compensation, minimum wages, or "spread of hours" premium pursuant to the New York Labor Law and the New York State Wage Theft Prevention Act;
- (f) An award of civil penalties as a result of Defendants' violation of the New York Labor Law's notice provisions pursuant to NYLL §§ 198(1-b) and 198(1-d);
- (g) An award of unpaid contributions to Federal and State mandated benefit programs;
- (h) An award of punitive damages;
- (i) An award of pre-judgment and post-judgment interest;
- (j) Awarding Plaintiff reasonable costs and fees of this action;
- (k) Awarding Plaintiff her attorney fees pursuant to 42 U.S.C. § 1988; and
- (l) Such other and further relief as the Court deems just and proper.

Dated: June 12, 2017  
Farmingdale, New York

**FRANK & ASSOCIATES, P.C.**

  
\_\_\_\_\_  
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*Attorneys for Plaintiff*

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
Blanca Guerrero, individually and on behalf of others similarly situated,

**DEFENDANTS**  
Miracle Mile Auto Wash, LLC d/b/a Manhasset Hand Wash & Detail Center and Scott "Doe"

(b) County of Residence of First Listed Plaintiff Nassau County  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Frank & Associates, P.C.  
500 Bi-County Boulevard, Suite 465, Farmingdale, New York 11735  
(631) 756-0400

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. §§ 201, et seq.

Brief description of cause:  
Violations of the Fair Labor Standards Act, New York Labor Law

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 1,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

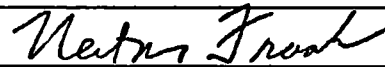
(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
07/17/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Neil M. Frank, Esq., counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? NO
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? YES
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: Neil M. Frank



Civil Action No. 17-cv-4238

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



Civil Action No. 17-cv-4238

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
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\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

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designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [NY Car Wash Accused of Various Labor Law Violations](#)

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