

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ABRAHAM WEINSTEIN, on behalf of himself,
individually, and on behalf of all others similarly-
situated,

Plaintiff,

-against-

GOLDEN KNIGHT LIMOUSINE SERVICE, INC.,
GOLDEN KNIGHT LIMOUSINE II LLC, and
ERNEST A. BIELE, individually,

Defendants.

COMPLAINT

Docket No.:

Jury Trial Demanded

ABRAHAM WEINSTEIN (“Plaintiff”), on behalf of himself, individually, and on behalf of all others similarly-situated, (collectively as “FLSA Plaintiffs”), by and through his attorneys, BORRELLI & ASSOCIATES, P.L.L.C., as and for his Complaint against GOLDEN KNIGHT LIMOUSINE SERVICE, INC. (“Defendant Golden Knight”), GOLDEN KNIGHT LIMOUSINE II LLC, (“Defendant Golden Knight II”), and ERNEST A. BIELE, individually (“Defendant Biele”), (collectively 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 CASE

1. This is a civil action for damages and equitable relief based upon violations that Defendants committed of Plaintiff’s rights guaranteed by: (i) the overtime provisions of the Fair Labor Standards Acts (“FLSA”), 29 U.S.C. § 207(a); (ii) the FLSA’s minimum wage provisions, 29 U.S.C. § 206(a); (iii) the overtime provisions of the New York Labor Law (“NYLL”), NYLL § 160, N.Y. Comp. Codes R. & Regs. (“NYCCRR”) tit. 12, § 142-2.2; (iv) the NYLL’s minimum wage provisions, N.Y. Lab. Law § 652(1), NYCCRR tit. 12, § 142-2.1; (v) the

requirement that employers pay spread of hours premiums under N.Y. Lab. Law § 652, and NYCCRR tit. 12 § 142 *et seq.*; (vi) the NYLL's requirement that employers furnish employees with wage statements containing specific categories of accurate information on each payday, N.Y. Lab. Law § 195(3); (vii) the NYLL's requirement that employer furnish employees with a wage notice at hire containing specific categories of accurate information, N.Y. Lab. Law § 195(1); and (viii) any other claim(s) that can be inferred from the facts set forth herein.

2. Plaintiff worked for Defendants - - two transportation companies that operated as a single enterprise and their owner - - as a driver from February 2013 to May 2014. As described below, Defendants willfully failed to pay Plaintiff the wages lawfully due to him under the FLSA and the NYLL. Specifically, for the entirety of his employment, Defendants routinely required Plaintiff to work beyond forty hours in a workweek, but failed to compensate him at the statutorily-required overtime rate for any hours that he worked in excess of forty, or at the minimum wage rate for every hour worked.

3. Additionally, Defendants failed to provide Plaintiff with spread of hours pay on days when he worked in excess of ten hours and his rate of pay fell below the effective minimum wage, proper wage statements on each payday, or with an accurate wage notice at the time of hire, as the NYLL requires.

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

5. 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' violations of the FLSA. Plaintiff brings claims under state

law on behalf of himself, individually, and on behalf of all FLSA Plaintiffs who opt-into this action.

JURISDICTION AND VENUE

6. 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.

7. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391(b)(1), as one or more of the Defendants reside within this judicial district, and 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

8. At all relevant times herein, Plaintiff worked for Defendants in New York and was an “employee” entitled to protection as defined by the FLSA, NYLL, and NYCCRR.

9. At all relevant times herein, Defendants Golden Knight and Golden Knight II were and are a New York companies that operated as a single business enterprise, with their principal places of business located at 2 Barger Street, Putnam Valley, New York 10579.

10. At all relevant times herein, Defendant Biele was and is the chief executive officer and president of Defendants Golden Knight and Golden Knight II. Defendant Biele personally managed and oversaw the day-to-day operations of Defendants Golden Knight and Golden Knight II, and was ultimately responsible for all matters with respect to determining employees’ rates and methods of pay and hours worked. Furthermore, Defendant Biele had and exercised the power to hire and fire and approve all personnel decisions with respect to Defendants Golden Knight and Golden Knight II employees.

11. At all relevant times herein, all Defendants were and are “employers” within the meaning of the FLSA and NYLL. Additionally, Defendant Golden Knight’s and Defendant Golden Knight II’s qualifying annual business exceeded and exceeds \$500,000, and Defendants Golden Knight and Golden Knight II are engaged in interstate commerce within the meaning of the FLSA, as they operate a business shuttling passengers between airports and across state lines, the combination of which subjects Defendants to the FLSA’s overtime and minimum wage requirements as an enterprise. Furthermore, all of Defendants’ employees, including Plaintiff and FLSA Plaintiffs, are required to drive clients across state lines, engaging in travel throughout New York, New Jersey, Connecticut, and various other states, as part of their jobs working for Defendants. This independently subjects Defendants to the overtime and minimum wage requirements of the FLSA with respect to Plaintiff and FLSA Plaintiffs.

COLLECTIVE ACTION ALLEGATIONS

12. Plaintiff seeks to bring this suit to recover from Defendants unpaid overtime compensation and minimum wages, 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 drivers, who during the applicable FLSA limitations period, performed any work for Defendants, and who consent to file a claim to recover damages for overtime compensation and/or minimum wages that are legally due to them (“FLSA Plaintiffs”).

13. 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; (5) were not paid at

an amount equal to the minimum hourly required rate of pay for each hour worked; and (6) were not paid the required one and one-half times their respective regular rates of pay, or one and one-half times the minimum wage rate, if greater, for all hours worked per workweek in excess of forty.

14. 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, or one and one-half times the minimum wage rate, if greater, for all hours worked each workweek above forty, and at least at the minimum hourly required rate of pay for each hour worked, yet they purposefully and willfully chose and choose not to do so.

15. Thus, 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, or at the minimum wage rate for each hour worked, in violation of the FLSA.

BACKGROUND FACTS

16. Defendants Golden Knight and Golden Knight II are New York-based transportation companies that operate as a single enterprise ("Golden Knight"), which shuttles passengers to and from Westchester Airport, Newark Liberty International Airport, LaGuardia Airport, and John F. Kennedy International Airport, and also provides transportation services between other non-airport destinations in various states, including New York, New Jersey, and Connecticut. The two entities described above all: have an interrelation of operations in providing transportation by sharing customers and/or passengers with one another; assert control over their labor relations between employees and management; have common management by

Defendant Biele; and have common ownership and control over their finances by Defendant Biele..

17. In February 2013, Defendant Biele hired Plaintiff as a driver for Golden Knight, and Defendants employed him in this position until May 2014.

18. As its name reflects, Plaintiff's primary duties consisted of driving Defendants' clients in a luxury four-door sedan, with a maximum capacity of five passengers, from and to various destinations throughout New York, Connecticut, and New Jersey, and occasionally other locations. Primarily, Plaintiff drove Defendants' clients between airport and non-airport locations, on fixed routes that Defendants assigned.

19. Throughout his employment, Defendants required Plaintiff to work six days a week, starting his workday as early as 4:00 a.m. and working sometimes until 12:00 a.m., without permitting Plaintiff to take scheduled or uninterrupted breaks. By approximation, throughout his employment, Defendants required Plaintiff to work, and Plaintiff did routinely work, approximately 120 per week.

20. By way of example only, during the week of December 9 through December 15, 2013, Defendants required Plaintiff to work, and Plaintiff did work, the following schedule:

Monday, December 9, 2013: 5:00 a.m. until 9:00 p.m.

Tuesday, December 10, 2013: Off

Wednesday, December 11, 2013: 5:00 a.m. until 10:00 p.m.

Thursday, December 12, 2013: 5:00 a.m. until 11:00 p.m.

Friday, December 13, 2013: 5:00 a.m. until 11:00 p.m.

Saturday, December 14, 2013: 8:00 a.m. until 12:00 a.m.

Sunday, December 15, 2013: 8:00 a.m. until 12:00 a.m.

Thus, adding up the hours for this representative workweek, Plaintiff worked 101 hours.

21. By a second way of example only, during the week of January 13 through January 19, 2014, Defendants required Plaintiff to work, and Plaintiff did work, the following schedule:

Monday, January 13, 2014: 4:00 a.m. until 10:00 p.m.

Tuesday, January 14, 2014: Off

Wednesday, January 15, 2014: 4:00 a.m. until 11:00 p.m.

Thursday, January 16, 2014: 4:00 a.m. until 10:00 p.m.

Friday, January 17, 2014: 4:00 a.m. until 11:00 p.m.

Saturday, January 18, 2014: 8:00 a.m. until 12:00 a.m.

Sunday, January 19, 2014: 8:00 a.m. until 12:00 a.m.

Thus, adding up the hours for this representative workweek, Plaintiff worked 106 hours.

22. For each workweek that Plaintiff worked, Defendants failed to pay Plaintiff a wage that had any relation to his hours whatsoever, and instead paid Plaintiff a commission, which constituted twenty percent of his passengers' fares.

23. Additionally, the Defendants permitted Plaintiff to keep any gratuities in cash from passengers if any passengers did in fact give him gratuities.

24. By way of example only, for the weekly pay period of December 9 through December 15, 2013, when Plaintiff worked a total of 101 hours, Defendants paid Plaintiff \$400 in commission and Plaintiff received approximately \$20.00 in gratuities from passengers.

25. As an additional example, for the weekly pay period of January 13 through January 19, 2014, when Plaintiff worked a total of 106 hours, Defendants paid Plaintiff \$200.00 in commission and Plaintiff received approximately \$10.00 in gratuities from passengers.

26. For the entirety of Plaintiff's employment, Defendants failed to pay Plaintiff for any hours that Plaintiff worked over forty at the applicable rate of time and one-half his straight-time rate, or time and one-half the minimum wage rate, if greater.

27. Defendants also failed to pay Plaintiff the statutorily-required minimum wage in certain weeks. For example, during the weekly pay period of January 13 through January 19, 2014, when Plaintiff worked 106 hours Defendants paid Plaintiff \$400.00 and Plaintiff received \$20.00 in gratuities, which yielded a regular rate of \$4.16 per hour, which is less than the minimum wage.

28. Furthermore, during the weeks that Plaintiff's regular wage rate fell below the effective minimum wage rate, Defendants failed to compensate Plaintiff with an extra hour of pay at the minimum wage rate for each day in which Plaintiff's spread of hours worked exceeded ten. For example, Plaintiff worked more than ten hours per day during the week of December 9 through December 15, 2013, yet Defendants failed to pay Plaintiff for an extra hour of work each day at the minimum wage rate for these days.

29. Defendants paid Plaintiff on a weekly basis.

30. On each occasion when they paid Plaintiff, Defendants failed to provide Plaintiff with a wage statement that accurately listed, *inter alia*, his actual hours worked for that week, or his straight and overtime rates of pay for all hours worked.

31. Additionally, Defendants did not provide Plaintiff with a wage notice at the time of his hire that accurately contained, *inter alia*, Plaintiff's rates of pay as designated by the employer.

32. Defendants treated Plaintiff and all FLSA Plaintiffs in the manner described above.

33. Defendants acted in the manner described herein so as to maximize their profits while minimizing their labor costs and overhead.

34. Each hour that Plaintiff and FLSA Plaintiffs worked was for Defendants' benefit.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime under the FLSA

35. 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.

36. 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 rate of pay, or one and one-half time the minimum wage rate, if greater, for all hours worked exceeding forty in a workweek.

37. 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.

38. Plaintiff and FLSA Plaintiffs worked in excess of forty hours per week, yet Defendants failed to compensate Plaintiff and FLSA Plaintiffs in accordance with the FLSA's overtime provisions.

39. Defendants willfully violated the FLSA.

40. 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, or one and one-half time the minimum wage rate, if greater.

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

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS

Minimum Wage Violations of the FLSA

42. 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.

43. 29 U.S.C. § 206(a) prescribes a minimum wage that employers must pay to their employees for each hour worked.

44. 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.

45. As also described above, Defendants did not compensate Plaintiff and FLSA Plaintiffs at the minimum hourly rate required by the FLSA for every hour worked.

46. Defendants willfully violated the FLSA.

47. At the least, Plaintiff and FLSA Plaintiffs are entitled to payment at the minimum wage for every hour that they worked for Defendants pursuant to the FLSA's minimum wage provisions.

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

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime Under the NYLL and the NYCCRR

49. Plaintiff, and any FLSA Plaintiff that 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.

50. 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, or one and

one-half times the minimum wage rate, if greater, for any hours worked exceeding forty in a workweek.

51. As described above, Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, and any FLSA Plaintiff that opts in to this action, are employees within the meaning of the NYLL and the NYCCRR.

52. As also described above, Plaintiff, and any FLSA Plaintiff that 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.

53. Plaintiff, and any FLSA Plaintiff that opts in to this action, are entitled to their 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, or one and one-half times the minimum wage rate, if greater.

54. Plaintiff, and any FLSA Plaintiff that opts in to this action, are also entitled to liquidated damages, interest, and attorneys' fees for Defendants' violations of the NYLL's and NYCCRR's overtime provisions.

FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS
Minimum Wage Violations of the NYLL and the NYCCRR

55. Plaintiff, and any FLSA Plaintiff that 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.

56. NYLL § 652(1) and the executing provisions of 12 NYCCRR § 142-2.1 *et seq.* prescribe a minimum wage that employers must pay to their employees for each hour worked.

57. As described above, Defendants are employers within the meaning of the NYLL and NYCCRR, while Plaintiff, and any FLSA Plaintiff that opts in to this action, are employees within the meaning of the NYLL and NYCCRR.

58. As also described above, Defendants did not compensate Plaintiff, and any FLSA Plaintiff that opts in to this action, at the minimum hourly rate required by the NYLL and NYCCRR for every hour worked.

59. At the least, Plaintiff, and any FLSA Plaintiff that opts in to this action, are entitled to payment at the minimum wage for every hour that they worked for Defendants pursuant to the NYLL's and NYCCRR's minimum wage provisions.

60. Plaintiff, and any FLSA Plaintiff that opts in to this action, are also entitled to liquidated damages, interest, and attorneys' fees for Defendants' violations of the NYLL's and NYCCRR's minimum wage provisions.

FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS

Violation of the NYLL's and the NYCCRR's Spread of Hours Requirement

61. Plaintiff, and any FLSA Plaintiff that 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.

62. NYLL § 652 and 12 NYCCRR § 142-2.5 provide that an employee shall receive one hour's pay at the minimum hourly wage rate for any day worked in which the spread of hours exceeds ten hours.

63. As described above, Defendants are employers within the meaning of the NYLL and NYCCRR, while Plaintiff, and any FLSA Plaintiff that opts in to this action, are employees within the meaning of the NYLL and NYCCRR.

64. As also described above, Defendants failed to provide Plaintiff, and any FLSA Plaintiff that opts in to this action, with one hour's pay at the minimum wage rate on days when their spread of hours exceeded ten.

65. Plaintiff, and any FLSA Plaintiff that opts in to this action, are entitled to this extra hour of pay, at the minimum wage rate, for all days in which they worked in excess of ten hours and earned less than the effective minimum wage for each hour worked.

66. Plaintiff, and any FLSA Plaintiff that opts in to this action, are also entitled to liquidated damages, interest, and attorneys' fees for Defendants' failure to pay them the required spread of hours pay.

SIXTH CLAIM OF RELIEF AGAINST DEFENDANTS

Failure to Furnish Proper Wage Statements in Violation of the NYLL

67. Plaintiff, and any FLSA Plaintiff that 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.

68. 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.

69. As described above, Defendants, on each payday, failed to furnish Plaintiff, and any FLSA Plaintiff that opts in to this action, with accurate wage statements containing the criteria required under the NYLL.

70. Prior to February 27, 2015, pursuant to N.Y. Lab. Law § 198(1-d), Defendants are liable to Plaintiff, and any FLSA Plaintiff that opts in to this action, in the amount of \$100 for each workweek after the violation occurred, up to a statutory cap of \$2,500.

71. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff, and any FLSA Plaintiff that opts in to this action, in the amount of \$250 for each workday after the violation occurred, up to a statutory cap of \$5,000.

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

72. Plaintiff, and any FLSA Plaintiff that 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.

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

74. Defendants are employers within the meaning of the NYLL and the NYCCRR, while Plaintiff, and any FLSA Plaintiff that opts in to this action, are employees within the meaning of the NYLL and the NYCCRR.

75. As described above, Defendants failed to furnish Plaintiff, and any FLSA Plaintiff that opts in to this action, with accurate wage notices at hire containing all of the criteria required under the NYLL.

76. Prior to February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, and any FLSA Plaintiff that opts in to this action, in the amount of \$50 for each workweek after the violations initially occurred, up to a statutory cap of \$2,500.

77. On or after February 27, 2015, pursuant to NYLL § 198(1-b), Defendants are liable to Plaintiff, and any FLSA Plaintiff that opts in to this action, in the amount of \$50 for each workday after the violations initially occurred, up to a statutory cap of \$5,000.

DEMAND FOR A JURY TRIAL

78. Pursuant to FRCP 38(b), Plaintiff and FLSA Plaintiffs demand a trial by jury in this action.

PRAYER FOR RELIEF

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

a. A judgment declaring that the practices complained of herein are unlawful and in 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 and/or FLSA 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. All damages that Plaintiff and FLSA 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 and FLSA Plaintiffs would have received but for Defendants' unlawful payment practices;


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

Dated: New York, New York
October 26, 2016

Respectfully submitted,

BORRELLI & ASSOCIATES, P.L.L.C.
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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: [Wage and Hour Class Action Filed Against Golden Knight Limo Service](#)
