SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SCOTT BONILLA, individually and on behalf of all other persons similarly situated who were employed by A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., MICHAEL LABY and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., and/or other entities affiliated or controlled by A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., MICHAEL LABY,

Plaintiffs,

- against -

A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., MICHAEL LABY, and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC.,

Defendants.

Index No.:

Date Filed:

Plaintiff designates the County of New York as the place of trial.

Venue is based on the place where the work took place.

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to serve upon Plaintiff's attorneys an answer to the complaint in this action within 30 days after service of this summons. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 5, 2013

Counsel for Plaintiffs and Putative Class

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-and-

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TO: A-1 FIRST CLASS VIKING MOVING & STORAGE, INC.
201 64TH Street
Brooklyn, N.Y. 11220

A-1 FIRST CLASS MOVING & STORAGE, INC.
201 64TH Street
Brooklyn, N.Y. 11220

MICHAEL LABY
201 64TH Street
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SHER-DEL TRANSFER AND RELOCATION SERVICES, INC.,
247 Metropolitan Avenue
Brooklyn, N.Y. 11211

SUPREME COURT OF THE STATE OF NEW YORK
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SCOTT BONILLA, individually and on behalf of all other persons similarly situated who were employed by A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., MICHAEL LABY and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., and/or other entities affiliated or controlled by A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., MICHAEL LABY, Plaintiff, - against - A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. , A-1 FIRST CLASS MOVING & STORAGE, INC., MICHAEL LABY, and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., Defendants.	Index No.: _____-2013 **CLASS ACTION COMPLAINT**

Plaintiff, on behalf of the putative class, by his attorneys, Virginia & Ambinder, LLP, and Fittapelli & Schaffer, LLP for his Complaint against Defendants, allege as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to New York Labor Law §§ 160, 190 *et seq.*, and 652; and N.Y. CODES RULES AND REGULATIONS ("NYCRR") TITLE 12 §142-2.2, NYCRR § 142-2.4, and 12 NYCRR § 137-1.6, on behalf of Plaintiff and a putative class of individuals who furnished labor to Defendants (collectively "Plaintiffs") A-1 FIRST CLASS VIKING MOVING & STORAGE, INC., A-1 FIRST CLASS MOVING & STORAGE, INC., MICHAEL LABY, and SHER-DEL TRANSFER AND RELOCATION SERVICES, INC. (hereinafter A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. and A-1 FIRST CLASS MOVING & STORAGE, INC. collectively referred to as "A-1 Moving", SHER-DEL TRANSFER AND RELOCATION SERVICES, INC., referred to as "Sher-Del"and all parties

collectively referred to as "Defendants") to recover wages and benefits which Plaintiff and members of the putative class were statutorily and contractually entitled to receive for work they performed in connection with various contracts with such government entities as the New York City Law Department ("NYCLD"), New York City Department of Information Technology & Telecommunications ("NYCITT"), New York City Department of Education ("DOE"), New York City Department of Health and Mental Hygiene ("NYCHM"), New York City Department of Transportation ("NYCDOT"), New York City Department of Buildings ("NYCDB"), New York City Department of Education ("NYCDOE"), New York City Department of Youth and Community Development ("NYCYCD"), New York City Department of Environmental Protection ("NYCEPA"), New York City Department of Juvenile Justice ("NYCJJ"), New York City Police Department ("NYCPD"), New York City Campaign Finance Board ("NYCCFB"), New York City Department of Investigation ("NYCDI"), New York City Taxi and Limousine Commission ("NYCTLC"), New York City Department of Finance ("NYCDOF"), New York City Transit ("NYCMTA") and various other government agencies of the City of New York (hereinafter the "Government Entities"); and for unpaid wages, overtime, and other statutorily required compensation for work performed on behalf of Defendants by Plaintiff and other members of the putative class pursuant to contracts with the Government Entities or otherwise. The contracts that covered the work and services to be performed for the Government Entities are hereinafter referred to as the "Government Contracts".

2. Beginning in approximately 2007, and upon information and belief, until the present, Defendants engaged in a policy and practice of requiring their employees to regularly work in excess of forty (40) hours per week, without providing overtime compensation as required under law.

3. Beginning in 2007 and, upon information and belief, until the present, Defendants engaged in a policy and practice of requiring their employees to regularly work in excess of forty (40) hours per week, without providing overtime compensation as required under State law.

4. Beginning in 2007 and, upon information and belief, until the present, Defendants engaged in a policy and practice of requiring their employees to regularly appear at Defendants' offices without compensation on days when no work was assigned, in violation of 12 NYCRR § 137-1.6.

5. Beginning in 2007 and, upon information and belief, until the present, Defendants engaged in a policy and practice of not paying their employees for all hours worked, in violation of applicable state laws.

6. In addition to the requirement to pay overtime compensation for work performed on privately financed projects, Section 230 of the New York State Labor Law provides that the wages to be paid to service employees under a contract for building service work shall not be less than the "prevailing rate of wages."

7. Pursuant to § 230, "building service employee" means any person performing work in connection with the transportation of office furniture or equipment to or from such building, for a contractor under a contract with a public agency which is in excess of one thousand five hundred dollars ($1,500.00) and the principal purpose of which is to furnish services through the use of building service employees. See New York Labor Law § 230.

8. Pursuant to § 230, "building service employee" includes, but is not limited, to, occupations relating to the transportation of office furniture and equipment, but does not include clerical, sales, professional, technician and related occupations. See New York Labor Law § 230.

9. "Prevailing wage" means the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality. New York Labor Law § 230.

10. Section 230 also requires that the service employees performing such building service work be provided "supplements" at the prevailing rate. The term "supplements" means fringe benefits including medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by federal, state or local law to be provided by the contractor or subcontractor. New York Labor Law § 230.

11. Upon information and belief, the schedule of prevailing rates of wages and supplements to be paid all service employees furnishing building service work was annexed to and formed a part of each of the identified Government Contracts. Upon further information and belief, the Prevailing Wage Schedules annexed to the Government Contracts were the schedules of prevailing rates of wages and supplemental benefits issued for the year in which the Government Contracts were let.

12. This promise to pay and ensure payment of the prevailing wage and supplemental benefit rates in the Government Contracts was made for the benefit of all service employees furnishing building service work in accordance with the Government Contracts and, as such, the service employees furnishing labor are the beneficiaries of that promise.

13. Plaintiff performed various types of building service work, including but not limited to moving and storage related work in accordance with the Government Contracts.

14. Defendants paid Plaintiff less than the prevailing rates of wages and supplements to which Plaintiffs were entitled.

15. Plaintiff also performed various types of work, including but not limited to moving and storage related work, in accordance with contracts entered into between Defendants and various private individuals and entities.

16. Upon information and belief, while working for Defendants, Plaintiff and the members of the putative class did not receive any overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty hours in any given week.

17. At all times relevant to this action, Defendant Michael Laby was an officer, president, owner and/or shareholder of the Defendant corporations. Plaintiff and other members of the putative class performed labor in accordance with the Government Contracts, for the benefit of and at the direction of Defendant Laby.

18. Upon information and belief, Defendant Laby (i) had the power to hire and fire employees for that A-1 Moving; (ii) supervised and controlled employee work schedules or conditions of employment for A-1 Moving; (iii) determined the rate and method of payment for A-1 Moving's employees; and (iv) maintained employment records for A-1 Moving.

19. Upon information and belief, Defendant Laby was the principal and sole owner of A-1 Moving, dominated the day-to-day operating decisions of A-1 Moving, and made major personnel decisions for A-1 Moving.

20. Upon information and belief, Defendant Laby had complete control of the alleged activities of A-1 Moving which give rise to the claims brought herein.

21. The named Plaintiff has initiated this action seeking for himself, and on behalf of all similarly situated employees, compensation, including overtime compensation, he was deprived of, plus interest, damages, attorneys' fees, and costs.

PARTIES

22. Plaintiff Scott Bonilla is an individual who resides in Bronx County, New York who performed labor on behalf of the Defendants.

23. Upon information and belief, Defendant A-1 FIRST CLASS VIKING MOVING & STORAGE, INC. is incorporated under the laws of the State of New York, with its principal place of business at 201 64th Street, Brooklyn, N.Y. 11220, engaged in the moving and storage business.

24. Upon information and belief, Defendant A-1 FIRST CLASS MOVING & STORAGE, INC. is incorporated under the laws of the State of New York, with its principal place of business at 201 64th Street, Brooklyn, N.Y. 11220, engaged in the moving and storage business.

25. Upon information and belief, Defendant SHER-DEL TRANSFER & RELOCATION SERVICES, INC. is incorporated under the laws of the State of New York, with its principal place of business at 247 Metropolitan Avenue, Brooklyn, N.Y. 11211, engaged in the moving and storage business.

26. Upon information and belief, Defendant MICHAEL LABY ("Laby") is a resident of New York and, at all relevant times was an officer, director and/or owner of A-1 FIRST CLASS VIKING MOVING & STORAGE, INC., and A-1 FIRST CLASS MOVING & STORAGE, INC., which is a closely held corporation, as defined by the Business Law, and resides at 201 64th Street, Brooklyn, NY 11220.

CLASS ALLEGATIONS

27. This action is properly maintainable as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules.

28. This action is brought on behalf of Plaintiff and a class consisting of each and every other person who performed work for Defendants between 2007 and the present other than office and executive personnel.

29. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be no less than 200 employees. In addition, the names of all potential members of the putative class are not known.

30. The questions of law and fact common to the putative class predominate over any questions affecting only individual members.

31. The claims of Plaintiff is typical of the claims of the putative class.

32. Plaintiff and his counsel will fairly and adequately protect the interests of the putative class.

33. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS -- BREACH OF CONTRACT

34. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 33 hereof.

35. On information and belief, the Government Contracts with entered into by Defendants, set forth the prevailing rates of wages and supplemental benefits to be paid to Plaintiff and the putative class.

36. Those prevailing rates of wages and supplemental benefits were made part of the

Government Contracts for the benefit of Plaintiff and the putative class.

37. Defendants breached the Government Contracts by failing to ensure that Plaintiff and the putative class received the prevailing rates of wages and supplemental benefits for all labor performed in accordance with the contracts.

38. By reason of Defendants' breach of the Government Contracts, Plaintiff and the putative class have been damaged in an amount to be determined at trial, plus interest, fees and costs.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS --
FAILURE TO PAY WAGES

39. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 38 hereof.

40. Pursuant to Article Six of the New York Labor Law, workers, such as the Plaintiff and other members of the putative class, are protected from wage underpayments and improper employment practices.

41. Pursuant to Labor Law § 190, the term "employee" means "any person employed for hire by an employer in any employment."

42. As persons employed for hire by Defendants, Plaintiff and the members of the putative class are "employees," as defined in Labor Law § 190.

43. Pursuant to Labor Law § 190, the term "employer" includes any "person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service."

44. As an entity that hired the Plaintiff and members of the putative class, Laby is an employer under Article 6 of the New York Labor Law.

45. Upon information and belief, pursuant to Labor Law § 190 and the cases

interpreting same, Laby is an employer under Labor Law § 190.

46. Plaintiff's agreed upon wage rate and/or overtime compensation rate constitute "wages" within the meaning of New York Labor Law §§ 190 *et seq.*

47. Pursuant to Labor Law § 650 *et seq.*, Plaintiff was entitled to be paid by Defendants for each hour worked.

48. Pursuant to Labor Law §§ 1990 *et seq.*, 193 and the cases interpreting same, workers are entitled to payment of wages for all hours worked, without deductions.

49. In failing to pay Plaintiff proper wages and overtime payments for time worked after forty hours in one week, and in failing to Plaintiff wages for all hours worked, Defendants violated Labor Law §§ 190 *et seq.* and 650 *et seq.*, by failing to pay Plaintiff and other members of the putative class all of their wages earned within the week such wages were due.

50. Upon information and belief, Defendants' failure to pay Plaintiff and other members of the putative class wages and overtime payments for all hours worked in excess of forty hours in one week was willful

51. New York Labor Law § 663 provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

52. Upon information and belief, Defendants' failure to pay Plaintiff wages earned for all hours worked in one week was willful

53. By the foregoing reasons, Defendants are liable to Plaintiff and other members of the putative class in an amount to be determined at trial, plus interest, attorneys' fees, and costs, pursuant to the above cited Labor Law sections.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS—
NEW YORK OVERTIME COMPENSATION LAW

54. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 53 hereof.

55. Pursuant to New York Labor Law § 160, eight hours of work "shall constitute a legal day's work."

56. 12 NYCRR § 142-2.2 requires that "[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate."

57. New York Labor Law Section 663, provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

58. Upon information and belief, Plaintiff and other members of the putative class worked more than forty hours per week while working for Defendants.

59. Upon information and belief, Plaintiff and other members of the putative class received no wages or overtime compensation for the hours worked after the first forty hours of work in a week.

60. Consequently, by failing to pay to Plaintiff and the other member of the putative class wages and overtime compensation for work they performed after the first forty hours worked in a week, Defendants violated New York Labor Law § 663 and 12 NYCRR § 142-2.2

61. Defendants' failure to pay wages and overtime compensation for work they performed after the first forty hours worked in a week to Plaintiff and the other member of the putative class was willful.

62. By the foregoing reasons, Defendants are liable to Plaintiff and other members of

the putative class in an amount to be determined at trial, plus interest, attorneys' fees and costs, pursuant to the above cited Labor Law sections.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS --
SHOW-UP PAY

63. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 62 thereof.

64. Upon information and belief, Defendants engaged in a pattern and practice of requiring and/or permitting Plaintiff and other members of the putative class to report for duty at Defendants' offices on days where no work was assigned to such worker.

65. Upon information and belief, on days where workers were required and/or permitted by Defendants to report for duty, but were not assigned work, those employees received no payment from Defendants for such days.

66. Pursuant to 12 NYCRR § 137-1.6, "[a]n employee who by request or permission of the employer reports for duty on any day, whether or not assigned to actually work, shall be paid at the applicable minimum wage rate... for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less."

67. By failing to pay Plaintiff and other members of the putative class call-in pay required under New York State law, Defendants have violated 12 NYCRR § 137-1.6.

68. Defendants' failure to pay Plaintiff and other members of the putative class call-in pay where required was willful.

69. By the foregoing reasons, Defendants have violated 12 NYCRR § 137-1.6 and are liable to Plaintiff and other members of the putative class in an amount to be determined at trial, plus interest, attorneys' fees and costs, pursuant to the above cited Labor Law and regulatory

sections.

WHEREFORE, Plaintiff demands judgment:

(1) on their first cause of action, against Defendants in an amount to be determined at trial, plus interest, fees and costs;

(2) on their second cause of action, against Defendants in an amount to be determined at trial, plus interest, attorneys' fees, and costs, pursuant to the above cited Labor Law sections;

(3) on their third cause of action, against Defendants in an amount to be determined at trial, plus interest, attorneys' fees, and costs, pursuant to the above cited Labor Law sections;

(4) on their fourth cause of action, against Defendants in an amount to be determined at trial, plus interest, attorneys' fees, and costs, pursuant to the above cited Labor Law sections; and

(5) such other and further relief as the Court may deem just and proper.

Dated: February 4, 2013
New York, New York

Counsel for Plaintiff and Putative Class

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