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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**CHRISTOPHER GONYER, on behalf of himself
and all others similarly situated,**

Plaintiff,

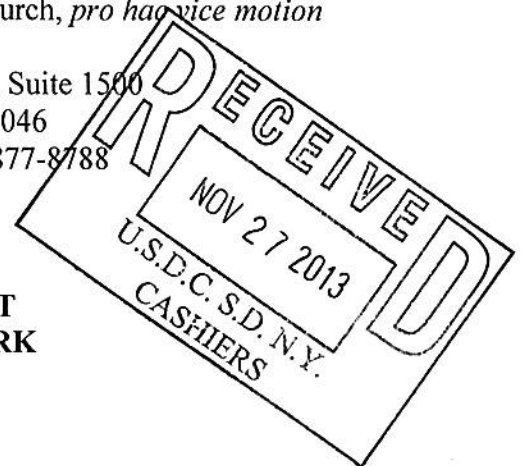
v.

**VANE LINE BUNKERING, INC., d/b/a VANE
BROTHERS COMPANY**

Defendant.

CIVIL CASE NO.: _____

**PLAINTIFF'S ORIGINAL
COLLECTIVE AND CLASS
ACTION COMPLAINT**



SUMMARY

1. Plaintiff Christopher Gonyer, individually and behalf of all others similarly situated, as class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

2. This lawsuit seeks to recover overtime compensation for Plaintiff and his similarly situated co-workers, tankermen, who work or have worked for Vane Line Bunkering Inc., d/b/a Vane Brothers Company (collectively "Vane Line") nationwide.

3. Vane Line provides a wide range of maritime services including bunkering, launch services and inspection of safety equipment. Today, Vane Line maintains a fleet of 30 tugs and 45

barges and operates out of ports in New York, Philadelphia, Baltimore, Norfolk, and Charleston.

<http://www.vanebrothers.com/About/About.html>.

4. Throughout the duration of Plaintiff's employment at Vane Line, Plaintiff has been employed as a tankerman. Tankermen work "loading and unloading transport petroleum ships" and barges. *Thompson v. Vane Lines Bunkering*, 15 F. App'x 77, 79 (4th Cir. 2001).

5. Tankermen generally work at least 12 hours a day, 7 days a week, for 2 weeks (or more) at a time. Regardless of the number of hours worked, Vane Line does not pay its tankermen overtime compensation.

6. Upon information and belief, Vane Line applied the same compensation and employment policies, practices, and procedures to all tankermen nationwide.

7. Plaintiff brings this action on behalf of himself and similarly situated current and former tankermen nationwide who elect to opt-in to this action pursuant to the FLSA, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Vane Line that have deprived Plaintiff and other similarly situated employees of their lawfully earned wages.

8. Plaintiff also brings this action on behalf of himself and all similarly situated current and former tankermen who worked in New York pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

JURISDICTION AND VENUE

9. This Court has original jurisdiction under 29 U.S.C. § 216(b), 28 U.S.C. § 1331(a), and over the state law class members pursuant to 28 U.S.C. 1332(d) – the Class Action Fairness Act - and/or pursuant to 28 U.S.C. § 1367.

10. The proposed class action includes a total number of plaintiffs in excess of 100.

11. At least one plaintiff is a resident of a state that is different than the state of residence of Vane Line.

12. The amount in controversy is in excess of \$5,000,000, exclusive of interests and costs.

13. Venue is proper in the Southern District of New York because a substantial portion of the events forming the basis of this suit and the conduct charged herein occurred in this District. Plaintiff worked in this District. Further, Vane Line conducts substantial business here. Accordingly, venue is proper in this district pursuant to 28 U.S.C. § 1391.

PARTIES AND PERSONAL JURISDICTION

Christopher Gonyer

14. Christopher Gonyer (“Gonyer”) is an adult individual who is a resident of Texas.

15. Gonyer was employed by Vane Line as a tankerman in its bunkering division within the past three years.

16. Gonyer performed the majority of his work for Vane Line in this District, and one of the three barges he worked on has its home port in this District.

17. At all relevant times, Plaintiff was “employee” of Vane Line as defined by the FLSA and NYLL.

18. At all relevant times, Vane Line was Plaintiff’s “employer” as defined in the FLSA and NYLL.

19. A written consent form for Gonyer is being filed with this Class Action Complaint.

Vane Line

20. Vane Line has owned and or operated Vane Line Bunkering, Inc., d/b/a Vane Brothers Company during the relevant period.

21. Vane Line is a foreign business corporation organized and existing under the laws of Maryland.

22. Vane Line conducts business within this District.

23. Vane Line owns and operates barges, including barges with their home ports in this District.

24. Vane Line is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.

25. At all times relevant, Vane Line maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

26. Vane Line applies the same employment policies, practices, and procedures to all tankermen at Vane line, including policies, practices, and procedures with respect to the payment of overtime compensation.

27. Upon information and belief, at all times relevant, Vane Line's annual gross volume of sales made or business done was not less than \$500,000.00.

FACTS

28. Vane Line employed Gonyer as a tankerman from October 27, 2010 to September 30, 2011. Gonyer worked at least 12 hours per day, generally 7 days a week, performing duties related to the loading and unloading of liquid cargo.

29. Like all Vane Line tankermen, Gonyer received a day rate as his only form of compensation and did not receive overtime compensation when he worked over 40 hours in a workweek.

30. Gonyer performed duties typical of a tankerman employed by Vane Line. He worked on a barge containing liquid cargo. During a hitch, various vessels would push the barge from port into the surrounding waterways to meet vessels too large to dock at the facility that contained the needed product. Once Gonyer's barge and the large vessel connected, Gonyer would load various dangerous liquids onto the larger vessel, a task known as "bunkering."¹

31. In a single shift or "watch," Gonyer and Vane Line's other tankermen load and unload numerous vessels and barges.

32. Even though Gonyer and Vane Line's similarly situated tankermen spent most, more than 20%, of their time bunkering, loading his barge, and preparing for product transfers (i.e., loading and unloading of cargo), Vane Line classified Gonyer and similarly situated tankermen as exempt from the overtime requirements of the FLSA. Thus, while Gonyer often worked in excess of 84 hours in a week, he never received overtime pay because Vane Line misclassified him as exempt. Vane Line owes Gonyer, and the other tankermen like him, back overtime wages.

33. By failing to pay its tankermen time and a half for each overtime hour worked over 40 in a workweek, Vane Line violated the FLSA and NYLL.

COLLECTIVE & CLASS ACTION ALLEGATIONS

The FLSA Collective

34. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of himself and all similarly situated persons who have worked as tankermen at Vane Line nationwide, who elect to opt-in

¹ As the "Bunkering" in its name implies, Vane Line's business involves, in large part, providing such "bunkering" services to the marine, power, and manufacturing industries.

to this action (the “FLSA Collective”).

35. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and other similarly situated tankermen.

36. Consistent with Defendant’s policy and pattern or practice, Plaintiff and the members of the FLSA Collective were not paid premium overtime compensation when they worked beyond 40 hours in a workweek.

37. All of the work that Plaintiff and the members of the FLSA Collective have performed has been assigned by Defendant, and/or Defendant has been aware of all of the work that Plaintiff and the FLSA Collective have performed.

38. As part of its regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the members of FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- (a) willfully failing to pay its employees, including Plaintiff and the members of the FLSA Collective, premium overtime wages for hours that they worked in excess of 40 hours per workweek;
- (b) willfully misclassifying Plaintiff and the members of the FLSA collective as exempt from the protections of the FLSA; and
- (c) willfully failing to record all of the time that its employees, including Plaintiff and the members of the FLSA Collective, have worked for the benefit of Defendant.

39. Defendant is aware or should have been aware that federal law required it to pay Plaintiff and the members of the FLSA Collective overtime premiums for hours worked in excess of 40 per workweek.

40. Plaintiff and the members of the FLSA Collective perform or performed the same primary duties.

41. Defendant's unlawful conduct has been widespread, repeated, and consistent.

42. There are many similarly situated current and former tankermen who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

43. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

44. Those similarly situated employees are known to Defendant, are readily identifiable and can be located through Defendant's records.

The NYLL Class

45. Plaintiff brings the Second Cause of Action, a NYLL claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of persons consisting of:

All persons who work or have worked as tankermen and similar employees at Vane Line in New York between November 27, 2007 and the date of final judgment in this matter (the "NYLL Class").

46. Excluded from the NYLL Class are Defendant, Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the NYLL Class.

47. The members of the NYLL Class are so numerous that joinder of all members is impracticable.

48. Upon information and belief, the size of the NYLL Class is at least 40 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendant.

49. Defendant has acted or has refused to act on grounds generally applicable to the

NYLL Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the NYLL Class as a whole.

50. Common questions of law and fact exist as to the NYLL Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- (a) whether Defendant violated NYLL, Articles 6 and 19, and the supporting New York State Department of Labor regulations;
- (b) whether Defendant failed to compensate Plaintiff and the NYLL Class for hours worked in excess of 40 hours per workweek;
- (c) whether Defendant failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the NYLL Class, and other records required by the NYLL;
- (d) whether Defendant failed to furnish Plaintiff and the NYLL Class with an accurate statement of wages, hours worked, rates paid, and the gross wages as required by the NYLL;
- (e) whether Defendant's policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and
- (f) the nature and extent of class-wide injury and the measure of damages for those injuries.

51. The claims of Plaintiff are typical of the claims of the NYLL Class he seeks to represent.

52. Plaintiff and all of the NYLL Class members work, or have worked, for Defendant as tankermen at Vane Line.

53. Plaintiff and the NYLL Class members enjoy the same statutory rights under the NYLL, including the right to be paid for all hours worked and to be paid overtime wages. Plaintiff and NYLL Class members have all sustained similar types of damages as a result of Defendant's failure to comply with the NYLL. Plaintiff and the NYLL Class members have all been injured in that they have been under-compensated due to Defendant's common policies, practices, and patterns of conduct.

54. Plaintiff will fairly and adequately represent and protect the interests of the members of the NYLL Class. Plaintiff understands that as class representative, he assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representative, he must represent and consider the interests of the class just as he would represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over the class. Plaintiff recognizes that any resolution of a class action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representation, he must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the NYLL Class members.

55. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the NYLL Class have been damaged and are entitled to recovery as a result of Defendant's violations of the NYLL, as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual NYLL Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual plaintiff lacks the financial resources to conduct a thorough examination of Defendant's timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendant to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

56. This action is properly maintainable as a class action under Federal Rule of Civil

Procedure 23(b)(3).

CAUSES OF ACTION
FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages

57. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

58. Defendant has engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Complaint.

59. At all relevant times, Plaintiff and the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

60. At all relevant times, Vane Line employed Plaintiff and the FLSA Collective.

61. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendant.

62. At all relevant times, Vane Line has been an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

63. At all times relevant, Plaintiff and the FLSA Collective were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

64. Defendant has failed to pay Plaintiff and the FLSA Collective the overtime wages to which they are entitled under the FLSA.

65. Vane Line's violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional.

66. Vane Line has not made a good faith effort to comply with the FLSA with respect to its' compensation of Plaintiff and the FLSA Collective.

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

68. As a result of Defendant's willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

69. As a result of the unlawful acts of Defendant, Plaintiff and the FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recover such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
New York Labor Law – Unpaid Overtime

70. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

71. Defendant engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

72. At all times relevant, Plaintiff and the members of the NYLL Class have been employees and Vane Line has been their employer within the meaning of the NYLL.

73. Plaintiff and the NYLL Class are covered by the NYLL.

74. Vane Line employed Plaintiff and the NYLL Class as an employer.

75. Vane Line has failed to pay Plaintiff and the members of the NYLL Class overtime wages to which they are entitled under the NYLL Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

76. Vane Line failed to pay Plaintiff and the members of the NYLL Class overtime at a wage rate of one and one-half times their regular rate of pay.

77. Vane Line failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and the members of the NYLL Class.

78. Vane Line's violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

79. Due to Vane Line's violations of the NYLL, Plaintiff and the members of the NYLL Class are entitled to recover from Defendant unpaid overtime, reasonable attorneys' fees and costs of the action, liquidated damages as provided for by NYLL Article 6 § 198, and pre-judgment and post-judgment interest.

PRAYER

80. For these reasons, Plaintiff and the classes pray for judgment against Vane Line as follows:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all tankermen and similarly situated employees who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked at Vane Line. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff as representative of the NYLL Class and counsel of record as Class Counsel;

E. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under the NYLL, Article 6, §§ 190 *et seq.*, NYLL, Article 19 §§ 650 *et seq.*, and MLL. Rev. Stat. § 290.527.

F. Unpaid overtime pay and liquidated damages permitted by law pursuant to the NYLL;

G. Prejudgment and post-judgment interest;

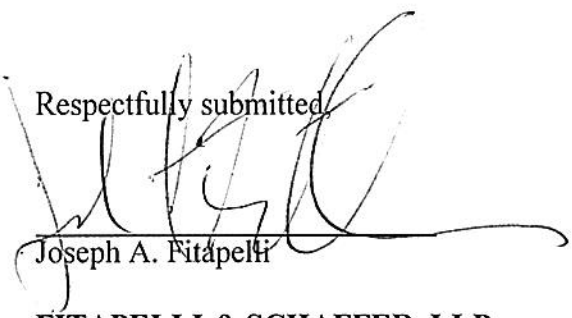
H. An injunction requiring Defendant to pay all statutorily required wages and cease the unlawful activity described herein pursuant to the NYLL;

I. Reasonable attorneys' fees and costs of the action; and

J. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
November 27, 2013

Respectfully submitted,


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NOTICE OF CONSENT

I consent to be a party plaintiff in this action and, if necessary, a subsequent action, to recover any unpaid wages owed to me by Vane Brothers

Christopher E Gonyer

Christopher E Gonyer (Aug 21, 2013)

Signature

Christopher E Gonyer

Full Legal Name (print)

