

Lina Stillman, Esq.
Stillman Legal, P.C.
42 Broadway, 12t Floor
New York, New York 10004
Tel (212) 203-2417
www.STILLMANLEGALPC.COM

Attorneys for Plaintiffs

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

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FELIX MORALES *INDIVIDUALLY AND ON
BEHALF OF OTHERS SIMILARLY SITUATED*

PLAINTIFF,

FPL FOODS, INC. and ANTONICO FOODS CORP.
(DBA LA BELLA MARKETPLACE) AND
LEONARD PESCE.

Defendants.

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COMPLAINT

**COLLECTIVE ACTION
UNDER 29 U.S.C. § 216(b)**

ECF Case

Plaintiff FELIX MORALES, bring this Class and Collective Action Complaint on behalf of himself and similarly situated co-workers against FPL FOODS, INC. and ANTONICO FOODS CORP. (DBA LA BELLA MARKETPLACE) AND LEONARD PESCE, (collectively, “Defendants”) pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., the New York Labor Law (“NYLL”), N.Y. Lab. Law § 650 et seq., as recently amended by the Wage Theft Prevention Act (“WTPA”), N.Y. Lab Law § 195(3), N.Y. Lab Law § 191, and related provisions from Title 12 of New York Codes, Rules and Regulations (“NYCRR”).

NATURE OF ACTION

1. This Collective Action Complaint seeks to recover overtime compensation, unlawful deductions for Plaintiffs and similarly situated co-workers who have been employed by Defendants to work at La Bella Marketplace for some or all the time period relevant to this action (the relevant time period being set by the federal and state claims' respective statutes of limitations).

2. Plaintiffs are former employees of Defendants who were ostensibly employed as Grocery Clerks at La Bella Marketplace located in Brooklyn.

3. As described herein, Individual Defendants Leonard Pesce ("Individual Defendants") employ Plaintiffs' for the purposes of the instant claims.

4. FPL FOODS, INC. and ANTONICO FOODS CORP. (DBA LA BELLA MARKETPLACE) are New York Corporations with headquarters at 7907 13th Ave, Brooklyn, NY 11228.

5. Individual Defendants Leonard Pesce operate and control Defendant Corporations and, by extension, Defendant Corporations' employees, for part or all of the time period relevant to this action.

6. At all relevant times, Plaintiffs regularly work for Defendants in excess of 40 hours per week, without receiving appropriate overtime compensation for any of the hours that they worked

7. Defendants' conduct extended beyond Plaintiffs to all other similarly situated employees.

8. Plaintiff now brings this Class and Collective Action on behalf of himself and other similarly situated individuals, for federal and state claims relating to unpaid overtime wages and failure to maintain records, Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., the New York Labor Law (“NYLL”), N.Y. Lab. Law § 650 et seq., as recently amended by the Wage Theft Prevention Act (“WTPA”), N.Y. Lab Law § 195(3), and related provisions from Title 12 of New York Codes, Rules and Regulations (“NYCRR”).

9. In connection with the above-mentioned allegations and claims, Plaintiffs seeks compensatory damages as well as applicable liquidated damages, interest, attorney’s fees and costs.

10. Plaintiffs seek certification of this action as a collective action under 29 U.S.C. § 216(b) on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 USC §§1331, and 1337 and jurisdiction over Plaintiffs’ state-law claims pursuant to 28 USC § 1367.

12. This Court also has jurisdiction over Plaintiffs’ claims under the FLSA pursuant to 29 U.S.C. § 216(b).

13. This Court is empowered to issue a declaratory judgment pursuant to 28 USC §§ 2201 and 2202.

14. The venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Corporate Defendants reside in this District, certain Plaintiffs reside in this

District and because a substantial part of the events that are the subject of the litigation transpired in this District.

COLLECTIVE-WIDE FACTUAL ALLEGATIONS

15. Plaintiffs bring their FLSA claims on behalf of themselves, and all similarly situated persons who work or have worked for Defendants on or after January 19, 2016, who elect to opt-in to this action (the “FLSA Collective”).

16. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

17. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice include, but is not limited to:

- a. Willfully failing to pay overtime wages for hours worked in excess of 40 hours per week;
- b. Willfully failing to keep records that satisfy statutory requirements.

18. At all relevant times, Plaintiff and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the require overtime pay at a one and one-half his regular rates for work in excess of forty (40) hours per workweek

under the FLSA, Plaintiffs' wages for which Defendants did not qualify under the FLSA, and willfully failing to keep records required by the FLSA.

19. The claims of Plaintiff stated herein are similar to those of the other employees and Plaintiff and the FLSA Collective all perform or performed the same primary duties.

20. Defendants are aware that FLSA required them to pay employees performing non-exempt duties, including Plaintiffs and the FLSA Collective overtime premium for hours worked in excess of 40 hours per workweek.

21. Defendants' unlawful conduct has been widespread, repeated, and consistent.

22. Plaintiff will fairly and adequately represent and protect the interests of the Class's members. Plaintiff understands that as class representatives they assume a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as class representatives, they must represent and consider the interests of the class just as they would represent and consider their own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over the Class's interests. 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, they must be informed of developments in litigation, cooperate with class counsel, and testify at deposition/trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and the Class.

23. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Class have been damaged and are entitled to

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