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Plaintiffs, and the Class*

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

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EDWARD CASTRO,

*on behalf of himself, FLSA Collective Plaintiffs  
and the Class,*

Plaintiff,

v.

HEMPSTEAD POULTRY, LLC,  
HEMPSTEAD POULTRY FARMS, INC., and  
JORGE PEREZ,

Defendants.

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Case No.:

**CLASS AND COLLECTIVE  
ACTION COMPLAINT**

**Jury Trial Demanded**

Plaintiffs EDWARD CASTRO (“Plaintiff”), on behalf of himself and others similarly situated, by and through his undersigned attorneys, hereby files this Class and Collective Action Complaint against HEMPSTEAD POULTRY, LLC, HEMPSTEAD POULTRY FARMS, INC., (“Corporate Defendants”) and JORGE PEREZ (“Individual Defendant” and together with the Corporate Defendants, “Defendants”) and states as follows:

**INTRODUCTION**

1. Plaintiff EDWARD CASTRO alleges, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), that he and others similarly situated are entitled to

recover from Defendants: (1) unpaid overtime wages due to misclassification of non-exempt workers as exempt, (2) unpaid minimum wages due to misclassification of a non-exempt worker as exempt, (3) liquidated damages and (4) attorneys' fees and costs.

2. Plaintiff EDWARD CASTRO alleges, pursuant to the New York Labor Law ("NYLL"), that he and others similarly situated are entitled to recover from Defendants: (1) unpaid overtime wages due to misclassification of non-exempt workers as exempt, (2) unpaid minimum wages due to misclassification of a non-exempt worker as exempt, (3) unpaid spread of hours premium, (4) liquidated damages, (5) statutory penalties, and (6) attorneys' fees and costs.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Corporate Defendant is headquartered in this District and because the events giving rise to this action took place in this District.

### **PARTIES**

5. Plaintiff EDWARD CASTRO is a resident of Suffolk County, New York.

6. Defendants collectively own and operate Hempstead Poultry Farms, Inc. and Hempstead Poultry, LLC at a single location in Hempstead, New York.

7. Corporate Defendant HEMPSTEAD POULTRY, LLC. is domestic limited liability company organized under the laws of New York with a principal place of business and address for service of process at 39 Newmans CT, Hempstead, New York 11550.

8. Corporate Defendant HEMPSTEAD POULTRY, FARMS, INC. is domestic business corporation organized under the laws of New York with a principal place of business and address for service of process at 39 Newmans CT, Hempstead, New York 11550.

9. Individual Defendant JORGE PEREZ is the owner and president of HEMPSTEAD POULTRY FARMS, INC., which operates HEMPSTEAD POULTRY, LLC.

10. JORGE PEREZ exercised functional control over the business and financial operations Corporate Defendants. and over the terms and conditions of Plaintiff's employment and those of FLSA Collective Plaintiffs and Class members. With respect to Plaintiff, FLSA Collective Plaintiffs and Class Members, JORGE PEREZ exercised his power to (and also delegated to managers and supervisors the power to) (i) fire and hire, (ii) determine rate and method of pay, (iii) supervise and control employee work schedules or conditions of employment, (iv) maintain employment records, and (iv) otherwise affect the quality of employment. JORGE PEREZ had ultimate authority over employee-related decisions, including personnel, workplace conditions, payroll, and wage and hour policies concerning Plaintiff, FLSA Collective Plaintiffs and Class members.

11. At all relevant times, Corporate Defendant was and continues to be an "enterprise engaged in commerce" within the meaning of the FLSA.

12. At all relevant times, Corporate Defendants employed at least fifteen (15) employees within the meaning of the FLSA and the NYLL.

13. At all relevant times Defendants were Plaintiff's employer within the meaning of NYLL § § 2 and 651.

14. At all relevant times, Plaintiff was Defendants' employees within the meaning of NYLL § § 2 and 651.

15. At all relevant times, the work performed by Plaintiff was directly essential to the business operated by Defendants.

### **STATEMENT OF FACTS**

16. Plaintiff EDWARD CASTRO has been employed by Defendants as a chicken cutter from in or about November 24, 2019, through the present. During the duration of Plaintiff CASTRO's employment, he has been paid at a fixed salary, and has been paid in cash on a weekly basis.

17. As a chicken cutter, Plaintiff works at Defendants' Hempstead Poultry, LLC, located at 39 Newmans CT, Hempstead New York, 11550. Plaintiff CASTRO's duties are to slaughter chickens and cut them to size.

18. During the entire duration of Plaintiff CASTRO's employment with Defendants, Plaintiff CASTRO has worked the same schedule. Plaintiff CASTRO works Tuesday – Saturday from 7:00 a.m. to 5:30 p.m., and on Sundays from 7:00 a.m. to 4:00 p.m., for a total of 61.5 hours per week.

19. During the duration of Plaintiff CASTRO's employment his fixed salary varied. From the start of his employment in November 2019 to June 2020, Plaintiff CASTRO was paid \$420 per week; from June 2020 to June 2021, Plaintiff CASTRO was paid \$500 per week; from June 2021 to August 2021, Plaintiff CASTRO was paid \$600 per week; and from August 2021 to the present, Plaintiff CASTRO has been paid \$650 per week. Class members were similarly paid on a fixed salary basis.

20. At no time during the duration of his employment has Plaintiff CASTRO been paid overtime wages for his hours worked over forty (40) in a workweek, because Defendants have classified him as exempt. This is a misclassification, however.

21. Additionally, due to Defendants paying Plaintiff CASTRO on a fixed salary basis for all hours worked, Plaintiff CASTRO was not compensated at the required minimum wage for the hours he worked for Defendants. Also, there was no agreement by Plaintiff or Class members that any portion of this fixed salary covered overtime hours.

22. Defendants were not entitled to classify Plaintiff CASTRO as an exempt worker because he does not fall into any of the exemption categories, under either FLSA or NYLL. Class members similarly are not exempt.

23. Additionally, during the duration of Plaintiff CASTRO's employment, Plaintiff CASTRO and Class members regularly worked shifts exceeding ten (10) hours in duration, but Defendants have failed to pay Plaintiff CASTRO or Class members their spread of hours premiums for these shifts, as required by NYLL.

24. Plaintiff CASTRO and Class members never received a wage and hour notice, at hiring or annually thereafter, in violation of NYLL.

25. Plaintiff CASTRO and Class members never received any wage statements with their weekly cash wages.

26. Additionally, had Defendants provided wage statements to Plaintiff or Class members, these would have been improper, since Defendants treated Plaintiff CASTRO and Class members as exempt workers when they were not exempt. Thus, the wages received by Plaintiff and Class members did not account for their overtime hours.

27. From his discussions with co-workers, Plaintiff learned that many other employees of Defendants had also been misclassified as exempt, although they did not fall into any of the exemption categories, under either FLSA or NYLL. As a result of this misclassification, these other employees also did not receive all of their minimum wages and overtime compensation.

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