

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICK GIOULES,

Plaintiff,

-against-

ANTIGUA PHARMACY LLC and
BRENDALIS ANTIGUA,

Defendants.

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Case No.:

**CLASS & COLLECTIVE
ACTION COMPLAINT**

Plaintiff NICK GIOULES (hereinafter, “Plaintiff” or “Mr. Gioules”), by and through his attorneys, SHALOM LAW, PLLC., files this Complaint against Defendants, ANTIGUA PHARMACY LLC (hereinafter the “Corporate Defendant” or “the Pharmacy”) and BRENDALIS ANTIGUA (hereinafter the “Individual Defendant” or “Antigua”), and states upon information and belief as follows:

INTRODUCTION

1. Plaintiff brings this action to recover unpaid wages, overtime wages, liquidated damages, interest (pre- and post-judgment), spread-of-hours compensation, and reasonable attorneys’ fees and costs under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201, *et seq.*) (“FLSA”), the wage orders promulgated thereunder by the United States Department of Labor (“USDOL”) and codified at 29 C.F.R. §§ 500, *et seq.*, and Articles 6, 7, and 19 of the New York Labor Law and the wage orders promulgated thereunder by the New York State Department of Labor and codified at 12 N.Y.C.R.R. §§ 146, *et seq.* (“NYLL”).

2. Upon information and belief, Defendants have willfully and intentionally committed widespread violations of the FLSA and NYLL.

3. Defendants have done so by engaging in a pattern and practice of failing to pay its employees, including Plaintiff, overtime compensation for all hours worked in excess of forty (40) hours for each workweek or the spread-of-hours pay each employee was entitled to for time worked in excess of ten (10) hours.

4. On or since September 1, 2019, Plaintiff was hired by Defendants to work at the Pharmacy.

5. Plaintiff regularly worked **in excess of forty-five (45) hours per week**, but was not compensated properly for the actual number of hours he worked, including for his overtime hours each week, or for the spread-of- hours pay he was lawfully entitled to applicable under state and federal laws.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 *et seq.* (FLSA), and 28 U.S.C. § 1337 (interstate commerce).

7. This Court has supplemental jurisdiction over the New York State law claims, conferred by 28 U.S.C. § 1367(a), as such claims are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper the Southern District of New York pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and because the Pharmacy is located within this District.

THE PARTIES

9. Plaintiff was and is a resident of Suffolk County, New York at all relevant times.

10. Plaintiff was hired by the Defendants on September 1, 2019.

11. The Pharmacy is a limited liability company duly organized under and authorized to do business under the laws of the State of New York with its principal place of business in Bronx County, New York.

12. Upon information and belief, the Individual Defendant resides in Bronx County, New York and is the sole managing member of the Pharmacy.

13. During all relevant times herein, the Defendants were Plaintiff's employer within the meaning of the FLSA and the NYLL.

NATURE OF THE ACTION

14. Plaintiff brings this action (a) pursuant to the FLSA and the regulations thereto; and (b) pursuant to the NYLL (§ 650 *et seq.*) and the New York Commissioner of Labor's Wage Order (the "Wage Orders,") codified at 12 N.Y.C.R.R. §§ 146, *et seq.* based upon the following acts and/or omissions which Defendants committed:

i. Defendants' failure to pay proper minimum wage and overtime compensation required by federal and state law and regulations to Plaintiff, who worked in excess of forty (40) hours each week;

ii. Defendants' failure to pay Plaintiff spread-of-hours compensation for every day he worked in excess of ten (10) hours, as required by NYLL §§ 190, *et seq.*, and §§ 650, *et seq.*, and New York State Department of Labor regulations § 146-1.6; and

iii. Defendants' failure to provide Plaintiff with a wage notice and proper paystubs as required by NYLL § 195.

15. Defendants have knowingly and willfully engaged in a policy, pattern, and practice of violating the FLSA and NYLL, as detailed in this Complaint.

STATEMENT OF FACTS

16. At all times relevant hereto, the Defendants committed the following acts and/or omissions intentionally and willfully, with knowledge that they have been violating federal and state laws and Plaintiff has thus been economically injured.

17. Plaintiff worked for the Defendants from on or about September 1, 2019 through on or about May 31, 2020.

18. Plaintiff was hired by Defendants to work as a supervising pharmacist at the Pharmacy, located at 1961 Southern Boulevard, Bronx, NY 10460-1419.

19. Immediately after his hiring, Plaintiff began working and worked at least forty-five (45) hours for every workweek for the Defendants at the Pharmacy.

20. Defendants knowingly, willfully, and intentionally assigned Plaintiff to work at least forty-five (45) hours every workweek.

21. Defendants agreed to pay Plaintiff \$55.00 per hour for every hour worked, such that he understood and expected to receive \$2,200.00 for his first forty (40) hours of work performed and \$82.50 for every hour of overtime work in excess of forty (40) hours worked per week.

22. However, Defendants only paid Plaintiff \$55.00 for every hour worked regardless of the fact he worked more than forty (40) hours per week for virtually every workweek he worked for Defendants.

23. As such, Plaintiff worked hours for which he was not properly compensated under the law.

24. Additionally, Defendants never paid Plaintiff the spread-of-hours compensation he was entitled to for each day that he worked an interval in excess of ten (10) hours.

25. Upon information and belief, the Pharmacy did not maintain records of the hours Plaintiff worked in direct violation of the law.

26. At all relevant times during his employment with the Defendants, Plaintiff was not exempt under federal and state laws requiring employers to pay employees overtime, as – *inter alia* – Defendants paid Plaintiff on an hourly basis.

27. Notwithstanding, at all relevant times, the Defendants knowingly and willfully failed to pay Plaintiff lawful overtime compensation of one and one-half times (1.5x) his regular rate of pay for all hours worked over forty (40) in a given workweek.

28. The Defendants also knowingly and willfully failed to pay Plaintiff the spread-of-hours compensation he was entitled to for every day he worked in excess of ten (10) hours.

29. Moreover, the Defendants have willfully disregarded and purposefully evaded the recordkeeping requirements of the FLSA and NYLL and supporting regulations, by failing to provide Plaintiff with a time-of-hire wage notice detailing his rate(s) of pay and frequency of pay, neglecting to give Mr. Gioules any accurate wage statements, and entirely disregarding its duty to maintain accurate payroll records.

30. Upon information and belief, the Defendants, by and through their agents and employees, chose not to maintain adequate and accurate written records of actual hours worked and true wages earned by Mr. Gioules in order to facilitate their exploitation of his labor.

31. Upon information and belief, Defendants willfully and intentionally maintained a pattern and practice of unlawfully failing to appropriately compensate its employees and actively disregarding record-keeping requirements.

32. Additionally, as if Defendants had not economically injured Plaintiff enough, the Defendants required Mr. Gioules to pay for supplies the Defendants needed totaling \$10,541.89.

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