

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RONALD TAPPEN,

Civil Action No.

Plaintiff,

-against-

INCORPORATED VILLAGE OF LINDENHURST,

Defendant.

-----X

COMPLAINT

Plaintiff, RONALD TAPPEN (hereinafter, “Plaintiff”), as and for his Complaint against Defendant, INCORPORATED VILLAGE OF LINDENHURST (hereinafter, “Defendants”), respectfully alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action under the Fair Labor Standards Act (hereinafter, the “FLSA”), 29 U.S.C. §§ 201 *et seq.*, Articles 6 and 19 of the New York Labor Law (hereinafter, “NYLL”), and the supporting New York State Department of Labor Regulations of the Official Compilation of Codes, Rules, and Regulations of the State of New York promulgated by the Commissioner of Labor pursuant to the Minimum Wage Act (hereinafter, the “Regulations”), including Part 142 of Title 12 (12 NYCRR § 142), to recover unpaid overtime compensation, unpaid regular wages, and for other relief.

2. Jurisdiction over Plaintiff’s FLSA claims is based upon Section 216(b) of the FLSA, 29 U.S.C. § 216(b), and upon 28 U.S.C. § 1331.

3. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367(a) because these claims are so related to the FLSA claims that they form part of the same case or controversy.

4. Venue in this district is appropriate under 28 U.S.C. §1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this judicial district.

PARTIES

5. Plaintiff has been employed by Defendant as an Emergency Medical Technician (hereinafter, "EMT") working for the Lindenhurst Fire Department from about 2004 through the present.

6. Plaintiff is a resident of Copiague, New York.

7. Defendant is a municipal corporation organized under the laws of the State of New York.

8. Defendant maintains administrative offices at 430 South Wellwood Avenue, Lindenhurst, New York 11757.

9. Defendant has a number of departments or instrumentalities that fall under its municipal authority including the Lindenhurst Fire Department.

10. The Lindenhurst Fire Department maintains its headquarters at 225 South Wellwood Avenue, Lindenhurst, New York 11757.

11. During the relevant period of Plaintiff's employment with Defendants, Plaintiff reported to the Lindenhurst Fire Department headquarters.

12. At all relevant times, Defendant maintained control, oversight, and direction over Plaintiff, including timekeeping, payroll, and other employment practices applied to him.

13. Defendant is a covered employer within the meaning of the FLSA and the NYLL, and, at all relevant times, employed Plaintiff.

FACTS

14. At all times relevant to this action, Plaintiff was employed as an EMT for the benefit of and at the direction of Defendant at the Lindenhurst Fire Department.

15. Throughout his employment with Defendant, Plaintiff's primary duty included responding to emergency alarms and providing on-scene medical services.

16. Throughout his employment with Defendant, Plaintiff signed in at the beginning of his shifts and signed out at the end of his shifts.

17. Upon information and belief, Defendant is in possession of Plaintiff's time records.

18. From about January 22, 2013 until about mid-2016, Plaintiff worked five days per week, Monday through Friday from or about 6:00 a.m. until or about 2:30 p.m.

19. During this time, Plaintiff did not receive and did not take any uninterrupted meal breaks during his shifts.

20. During this time, Plaintiff worked forty-two and one-half (42.5) hours per week.

21. During this time, despite not receiving any uninterrupted meal breaks during his shifts, Defendants deducted thirty (30) minutes from each shift that Plaintiff worked and only paid him for forty (40) hours.

22. During this time, Defendant did not pay Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for two and one-half (2.5) hours of work per week.

23. From about mid-2016 until about May 2017, Plaintiff worked four days per week, Monday through Thursday from or about 6:00 a.m. until or about 4:30 p.m.

24. During this time, Plaintiff did not receive and did not take any uninterrupted meal breaks during his shifts.

25. During this time, Plaintiff worked forty-two (42) hours per week.

26. During this time, despite not receiving any uninterrupted meal breaks during his shifts, Defendants deducted thirty (30) minutes from each shift that Plaintiff worked and only paid him for forty (40) hours.

27. During this time, Defendant did not pay Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for two (2) hours of work per week.

28. From about May 2017 until on or about January 6, 2019, Plaintiff worked a rotating, bi-weekly schedule of four days on (Monday, Tuesday, Wednesday, and Thursday) and three days off (Friday, Saturday, and Sunday) during the first week, and three days on (Tuesday, Wednesday, and Thursday) and four days off (Monday, Friday, Saturday, and Sunday) during the second week.

29. During this time, Plaintiff worked from or about 6:00 a.m. until or about 6:00 p.m. each day that he worked.

30. During this time, Plaintiff did not receive and did not take any uninterrupted meal breaks during his shifts.

31. During this time, Plaintiff worked forty-eight (48) hours during his 4-day weeks and thirty-six (36) hours during his 3-day weeks.

32. During this time, despite not receiving any uninterrupted meal breaks during his shifts, Defendants deducted thirty (30) minutes from each shift that Plaintiff worked.

33. During this time, Defendant added the number of hours Plaintiff worked during the 2-week period, subtracted thirty (30) minutes per shift, and paid Plaintiff for eighty and one-half (80.5) hours for the bi-weekly period, including one-half (0.5) hour of overtime pay.

34. During this time, Defendant did not pay Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for eight (8) hours of work for the first week of each bi-weekly pay period.

35. During this time, Defendant did not pay Plaintiff his regular rate of pay for one and one-half (1.5) hours of work for the second week of each bi-weekly pay period.

36. On or about October 25, 2018, Plaintiff served a Notice of Claim on Defendant, which was received on October 30, 2018.

37. In November 2018, shortly after receiving Plaintiff's Notice of Claim, Defendant ceased the practice of deducting thirty (30) minutes from Plaintiff's time worked each day and began paying him for this time worked each week.

38. Additionally, on or about January 7, 2019, Defendant changed Plaintiff's work schedule to four ten-hour shifts, Monday through Thursday, to ensure that he did not work in excess of forty (40) hours per week.

39. During the relevant period of Plaintiff's employment, Defendant did not pay Plaintiff overtime compensation for all of the hours that he worked in excess of forty (40) hours each week.

40. During the relevant period of Plaintiff's employment, Defendant did not pay Plaintiff at one and one-half times his regular rate of pay for all hours worked in excess of forty (40) hours per week.

41. During the relevant period of Plaintiff's employment, Defendant did not pay Plaintiff all of the regular wages to which he was entitled.

42. During the relevant period of Plaintiff's employment, Defendant failed to provide Plaintiff with accurate earnings statements, paystubs, cash receipts, or any other type of accurate

wage statement along with his weekly paycheck, as required by NYLL § 195(3), because the paystubs he received did not reflect the accurate number of hours that Plaintiff worked each week.

43. Defendant managed Plaintiff's employment, including the amount of overtime worked.

44. Defendant dictated, controlled, and ratified the wage and hour and all related employee compensation policies.

45. Defendant was aware of Plaintiff's work hours but failed to pay him the full amount of overtime compensation to which he was entitled for this work time under the law.

46. Defendant was aware that Plaintiff was not receiving uninterrupted meal breaks each shift but continued to deduct thirty (30) minutes from each shift and failed to pay him the full amount of wages to which he was entitled for this work time under the law.

47. Plaintiff does not meet any of the exemptions found in Sections 207 and 213 of the FLSA. Plaintiff does not meet any of the exemptions found in the NYLL.

48. Defendant's failure to pay proper wages in a timely manner has been made without good faith, willfully, and with a reckless disregard for Plaintiff's rights, and Plaintiff has been damaged by such failures.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT
29 U.S.C. § 201 ET SEQ.
FAILURE TO COMPENSATE FOR OVERTIME

49. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

50. The FLSA regulates the payment of wages by employers whose employees are "engaged in commerce or engaged in the production of goods for commerce, or are employed in

an enterprise engaged in commerce or in the production of goods for commerce.” 29 U.S.C. § 207(a)(1).

51. Defendants were and are subject to the overtime pay requirements of the FLSA because Defendant is an enterprise engaged in commerce or in the production of goods for commerce.

52. At all times relevant to this Complaint, Defendant had, and continues to have, two (2) or more employees handle goods or materials that have moved in interstate commerce, including Plaintiff who worked as an EMT and handled medical supplies and equipment that originated outside of the State of New York.

53. Upon information and belief, the gross annual volume of sales made or business done by Defendant for the years 2018, 2017, and 2016 was not less than \$500,000.00.

54. At all times relevant to this action, Plaintiff was entitled to the rights, benefits, and protections granted by the FLSA, 29 U.S.C. § 207, *et seq.*

55. Section 207(a)(1) of the FLSA states that an employee must be paid overtime, equal to at least one and one-half times the employee’s regular rate of pay, for all hours worked in excess of forty (40) per week.

56. By the above-alleged conduct, Defendant has violated the FLSA by failing to pay Plaintiff overtime compensation as required by the FLSA.

57. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from the overtime compensation requirements set forth in Section 207(a)(1) of the FLSA.

58. However, none of the Section 13 exemptions apply to Plaintiff because he has not met the requirements for coverage under the exemptions.

59. Defendant has acted willfully and has either known that its conduct violated the FLSA or has shown reckless disregard for the matter of whether its conduct violated the FLSA.

60. Defendant has not acted in good faith with respect to the conduct alleged herein.

61. As a result of Defendant's violations of the FLSA, Plaintiff has incurred harm and loss in an amount to be determined at trial, along with liquidated damages, attorneys' fees and costs of litigation, pursuant to 29 U.S.C. § 216(b).

COUNT II
VIOLATION OF THE NEW YORK LABOR LAW
ARTICLES 6 AND 19
FAILURE TO COMPENSATE FOR OVERTIME

62. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

63. At all times relevant to this Action, Plaintiff was employed by Defendant within the meaning of New York Labor Law §§ 2 and 651.

64. At all times relevant to this Action, Defendant was an "employer" of Plaintiff within the meaning of the NYLL and the supporting Regulations pertaining thereto.

65. At all times relevant to this Action, Plaintiff was an "employee" of Defendant within the meaning of the NYLL and the supporting Regulations pertaining thereto.

66. At all times relevant to this Action, Defendant employed Plaintiff, suffering or permitting him to work within the meaning of the NYLL and the supporting Regulations pertaining thereto.

67. The overtime wage provisions of Article 19 of the NYLL and its supporting Regulations apply to Defendant and protect Plaintiff.

68. Under New York law, an employee must be paid overtime, equal to one and one-half times the employee's regular rate of pay, for all hours worked in excess of forty (40) per week in the manner and methods provided by the FLSA. 12 N.Y.C.R.R. §§ 142-2.2.

69. By the above-alleged conduct, Defendant failed to pay Plaintiff overtime compensation as required by the NYLL and the Regulations pertaining thereto.

70. By the above-alleged conduct, Defendant failed to pay Plaintiff overtime compensation for the time periods in which he worked in excess of forty (40) hours a week for Defendant.

71. Plaintiff was not exempt from the overtime provisions of the NYLL, because he did not meet the requirements for any of the reduced number of exemptions available thereunder.

72. Defendant has acted willfully and has either known that its conduct violated the NYLL or has shown a reckless disregard for the matter of whether its conduct violated the NYLL. Defendant has not acted in good faith with respect to the conduct alleged herein.

73. As a result of Defendant's violations of the NYLL, Plaintiff has incurred harm and loss in an amount to be determined at trial, in addition to liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

COUNT III
VIOLATION OF THE NEW YORK LABOR LAW
ARTICLE 6
FAILURE TO PAY REGULAR WAGES

74. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

75. By the above-alleged conduct, Defendant suffered and permitted Plaintiff to work for weeks without paying Plaintiff his regular rate of pay.

76. By the above-alleged conduct, Defendant repeatedly accepted the fruits of Plaintiff's labor without paying Plaintiff his regular rate of pay.

77. Defendant's failures to pay Plaintiff for all of the hours that he worked constituted outrageous conduct, made knowingly and willfully, or with a reckless indifference to Plaintiff's rights.

78. As a result of Defendant's violations of the NYLL and the Regulations pertaining thereto, Plaintiff has incurred harm and loss in an amount to be determined at trial, in addition to liquidated damages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

**COUNT IV
VIOLATION OF THE NEW YORK LABOR LAW
NYLL SECTION 195(3)
FAILURE TO PROVIDE WAGE STATEMENTS**

79. Plaintiff reasserts and realleges the allegations set forth in each of the above paragraphs as though fully set forth herein.

80. Defendant willfully failed to provide Plaintiff accurate, written wage statements with his wages each week as required by NYLL § 195(3), which were to include, among other things, the dates of work covered by each payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof; deductions; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular hours worked and the number of overtime hours worked.

81. Through its knowing and intentional failure to provide Plaintiff with accurate wage statements required by the NYLL, Defendant has willfully violated NYLL §§ 190 *et seq.* and the supporting Regulations.

82. Due to Defendant's willful violations of the NYLL, Plaintiff is entitled to recover statutory penalties, together with costs and attorneys' fees as provided by NYLL § 198(1-d).

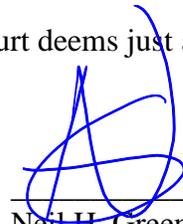
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, by and through his attorneys, Neil H. Greenberg & Associates, P.C., demands judgment against Defendant and in favor of Plaintiff, for a sum that will properly, adequately, and completely compensate Plaintiff for the nature, extent, and duration of the damages, costs of this action, and as follows:

- A. Declare and find that Defendant committed one or more of the following acts:
 - 1. Violated provisions of the FLSA by failing to pay overtime compensation to Plaintiff;
 - 2. Willfully violated the provisions of the FLSA;
 - 3. Violated the provisions of the NYLL by failing to pay overtime compensation and regular wages to Plaintiff;
 - 4. Willfully violated the applicable provisions of the NYLL;
 - 5. Violated the provisions of the NYLL by failing to provide Plaintiff with accurate wage statements during his employment with Defendant;
- B. Award compensatory damages, including all overtime compensation and regular wages owed, in an amount according to proof;
- C. Award liquidated damages under the NYLL, or alternatively the FLSA;
- D. Award interest on all NYLL overtime compensation and regular wages due accruing from the date such amounts were due;
- E. Award all costs, disbursements, and attorney's fees incurred in prosecuting this action, in addition to statutory damages under the NYLL; and

F. Provide such further relief as the Court deems just and equitable.

Dated: Massapequa, New York
January 22, 2019

A handwritten signature in blue ink, appearing to be 'Neil H. Greenberg', is written over a horizontal line.

Neil H. Greenberg, Esq.
Neil H. Greenberg & Associates, P.C.
Attorneys for the Plaintiff
4242 Merrick Road
Massapequa, New York 11758
Tel: 516.228.5100
nhglaw@nhglaw.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

RONALD TAPPEN

Plaintiff(s)

v.

INCORPORATED VILLAGE OF LINDENHURST

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) INCORPORATED VILLAGE OF LINDENHURST - 430 South Wellwood Avenue, Lindenhurst, New York 11757

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Neil H. Greenberg, Esq.
Neil H. Greenberg & Associates, P.C.
4242 Merrick Road
Massapequa, New York 11758

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RONALD TAPPEN

(b) County of Residence of First Listed Plaintiff Suffolk (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Neil H. Greenberg & Associates, P.C. 4242 Merrick Road, Massapequa, New York 11758 516.228.5100

DEFENDANTS

INCORPORATED VILLAGE OF LINDENHURST

County of Residence of First Listed Defendant Suffolk (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. §§ 201 et seq. Brief description of cause: Failure to pay overtime compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 200,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

01/22/2019

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Neil H. Greenberg, Esq., counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? Yes No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes No
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? Yes No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: 