

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 28 2011 ★

BROOKLYN OFFICE

**ALFRED LEWIS, MATTHEW LOVELL, RICARDO
LECKY and HERMAN ANTLEY, individually and
behalf of all other similarly situated persons,**

Plaintiffs,

v.

**ALERT AMBULETTE SERVICE CORP. and MARK
HANUKOV,**

Defendants.

CV 11 - 0442

WEINSTEIN, J.

AZRACK, M.J.

COLLECTIVE & CLASS ACTION COMPLAINT

1. Defendant ALERT AMBULETTE SERVICE CORP. ("ALERT AMBULETTE") is a privately owned company, owned and operated by MARK HANUKOV. Defendants operate an ambulette company based in Brooklyn, New York, for the purpose of transporting people to and from medical appointments.
2. Plaintiffs are scheduled to work 12 hours per day for defendants, but often work 14 or more hours per day. They work five to six days per week. Defendants only pay their driver employees a day rate for their work, which can be as little as \$80 per day. Defendants fail to pay drivers all the wages which they are owed, insofar as they fail to pay overtime premium pay, minimum wage, or spread of hours pay, as required by federal and state law. Defendants also make various unlawful deductions from the Plaintiffs' wages, including regular deductions to establish a performance guarantee when employees begin working for Defendants.

3. Plaintiffs seek unpaid wages, liquidated damages, interest, costs and attorneys' fees, as well as declaratory relief under the FLSA and state minimum wage and wage payment laws. Plaintiffs bring this claim individually and on behalf of other similarly situated employees under the collective action provisions of the FLSA. 29 U.S.C. § 216(b). Plaintiffs bring their state claims individually and under the class action rules of Fed. R. Civ. P. Rule 23.

JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b) of the Fair Labor Standards Act, by 28 U.S.C. §1331, this action arising under laws of the United States, and by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce. Jurisdiction over Plaintiffs' claims for declaratory relief is conferred by 28 U.S.C. §§2201 and 2202.
5. This Court has supplemental jurisdiction over the state claims raised in this case by virtue of 28 U.S.C. §§ 1332 and 1367.
6. Defendants reside in New York. Plaintiffs reside in New York.
7. Venue is proper in the Eastern District of New York, pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claim occurred in this District and at least one Defendant resides in this District.

PARTIES

A. Plaintiffs

8. Plaintiff ALFRED LEWIS is a natural person residing in New York. Plaintiff LEWIS was an employee of Defendants, as described herein. Plaintiff LEWIS worked for Defendants in New York from approximately May 2006 until

November 2010.

9. Plaintiff MATTHEW LOVELL is a natural person residing in New York. MATTHEW LOVELL was an employee of Defendants, as described herein. Plaintiff LOVELL worked for Defendants in New York from approximately November 2006 until March 2009.
10. Plaintiff MAKANDA FORRESTER is a natural person residing in New York. MAKANDA FORRESTER was an employee of Defendants, as described herein. Plaintiff FORRESTER worked for Defendants in New York from approximately December 2003 until September 2009.
11. Plaintiff HERMAN ANTLEY is a natural person residing in New York. HERMAN ANTLEY was an employee of Defendants, as described herein. Plaintiff ANTLEY worked for Defendants in New York from approximately fall of 2006 until August 2007.
12. Plaintiffs bring claims under the Fair Labor Standards Act, individually and on behalf of a collective action class as further described herein to redress the Defendants' failure to pay them minimum wages and overtime at the rate of time and one half, and wages for all hours worked.
13. Plaintiffs bring claims under New York Labor Law Articles 6 (failure to pay wages due, unlawful deductions) and 19 (minimum wage) and their implementing regulations, 12 NYCRR part 142, including 12 NYCRR §142-2.1 (minimum wage), §142-2.2 (overtime), §142-2.4 (spread of hours), individually and on behalf of a class pursuant to Fed. R. Civ. P. 23, to redress the Defendants failure to pay them minimum wages, overtime at the rate of time and one half, all wages due for all hours worked, and spread of hours pay.

14. Plaintiffs were engaged in commerce in their work for Defendants.

B. Represented Parties under FLSA

15. The term "Plaintiff" or "Plaintiffs" as used in this Complaint refers to the named Plaintiffs and any additional represented Class Members pursuant to the collective action provision of 29U.S.C. §216(b), and any additional Class Members pursuant to Rule 23.

16. The named Plaintiffs bring this case under the collective action provision of the FLSA, as set forth in 29 U.S.C. §216(b), on behalf of themselves and a class of persons throughout the U.S. consisting of "all drivers for ALERT AMBULETTE within the limitation period." The claim limitation period includes the three years preceding the filing of the initial complaint up through the date of final judgment herein and subject to any equitable tolling for any applicable period preceding the limitation period.

C. Class Action Allegations

17. The named Plaintiffs bring the Second and Third Causes of Action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of similarly situated persons consisting of "all drivers for ALERT AMBULETTE within the limitation period." The claim limitation period includes the six years preceding the filing of the initial complaint up through the date of final judgment herein and subject to any equitable tolling for any applicable period preceding the limitation period.

18. Excluded from any Rule 23 or Collective Action Class are Defendants' 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 any Defendants; 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 any Rule 23 Class.

19. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiffs, the facts on which the calculation of that number can be based are presently within the sole control of Defendants.
20. Upon information and belief, the size of the Rule 23 Class exceeds 40 individuals.
21. Defendants acted or refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final relief or corresponding declaratory relief with respect to the Class as a whole.
22. The New York State Causes of Action are properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:
 - a. whether Defendants failed to pay New York class Plaintiffs state statutory minimum wages in each week of work;
 - b. whether Defendants failed to pay New York class Plaintiffs state statutory overtime wages in each week of work;
 - c. whether Defendants failed to pay New York class Plaintiffs state spread of hours wages due for each day's labor with a spread of hours greater than ten;
 - d. whether Defendants wrongfully failed to pay each class member for all

- their hours of work;
 - e. whether Defendants made unlawful deductions from New York class Plaintiffs' pay; and
 - f. the nature and extent of Class-wide injury and the appropriate measure of damages for the Classes.
23. The claims of Plaintiffs are typical of the claims of the Class they seek to represent. Plaintiffs and the Class members work or have worked for Defendants and have been subjected to common contract terms and a policy and pattern or practice of failing to pay overtime, minimum wages, and spread of hours pay. Defendants acted and refused to act on grounds generally applicable to the Class, thereby making declaratory relief with respect to the Class appropriate.
24. Plaintiffs will fairly and adequately represent and protect the interests of the Class.
- a. Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the Class to represent its interests fairly and adequately.
 - b. Plaintiffs recognize that as class representatives, they must represent and consider the interests of the Class just as they would represent and consider their own interests.
 - c. Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the Class.
 - d. Plaintiffs recognize that any resolution of a class action lawsuit,

including any settlement or dismissal thereof, must be in the best interests of the Class.

e. Plaintiffs understand that to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and in trial.

25. Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.
26. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action, where individual Plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against Defendants. The members of the Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

D. Defendants

27. Upon information and belief, Defendant ALERT AMBULETTE SERVICE CORP. is a business corporation having an office and place of business in New York.
28. Defendant ALERT AMBULETTE is a New York business corporation that lists its headquarters and principal office address as 2702 Stillwell Ave.,

Brooklyn, NY 11224.

29. MARK HANUKOV is the owner and operator of ALERT AMBULETTE. He hires, fires, and controls the wages and working conditions of Plaintiffs.
30. Upon information and belief, Defendants grossed more than \$500,000 in each of the last six calendar years, individually and collectively.
31. Defendants jointly employ the named Plaintiffs and Plaintiff class members.
32. Defendant ALERT AMBULETTE is an enterprise engaged in interstate commerce for purposes of the Fair Labor Standards Act.
33. All actions and omissions described in this complaint were made by Defendants directly or through their supervisory employees and agents.

FACTS

34. Defendants employ Plaintiffs.
35. Plaintiffs drive Defendants' ambulettes to transport individuals to and from medical facilities, including but not limited to hospitals and dialysis facilities.
36. Upon information and belief, Defendants obtain revenues through billings to Medicaid, other government programs, and insurance companies.
37. Defendants generally schedule Plaintiffs for 5 or 6 shifts per week, with each shift scheduled for 12 hours per day.
38. Plaintiffs often work 14 or more hours for Defendants in a day.
39. Defendants pay Plaintiffs a day rate for each 12 hour day of labor.
40. Defendants pay Plaintiffs as little as \$80 per 12 hour work day.
41. Defendants pay Plaintiffs approximately \$15 for each additional 2 hours of work that they perform beyond their regularly scheduled 12 hour day.
42. Defendants pay Plaintiffs partly by check, and partly in cash.

43. Defendants make unlawful deductions from Plaintiffs' pay. During Plaintiffs' employment, Defendants make deductions from Plaintiffs' wages to guarantee future performance. During Plaintiffs' employment, Defendants make deductions from their wages to cover parking tickets or other expenses.
44. Defendants dispatch Plaintiffs to so many jobs that Plaintiffs regularly work through their lunchtime, eating in the ambulette while they drive.
45. Defendants fail to pay any overtime premium pay for hours exceeding 40 in a workweek.
46. Defendants fail to pay any spread of hours pay when the start and end of work involves a spread of hours of more than 10 hours in a workday.

**FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT)**

47. Defendants failed to pay minimum wages and overtime premium pay to Plaintiffs in violation of the Fair Labor Standards Act, 29 U.S.C. §206 *et seq.* and its implementing regulations.
48. Defendants' failure to pay proper minimum wages for each hour worked per week was willful within the meaning of the FLSA.
49. Defendants' failure to comply with the FLSA minimum wage protections caused Plaintiffs to suffer loss of wages and interest thereon.

**SECOND CAUSE OF ACTION
(NEW YORK LABOR LAW)**

50. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.
51. Defendants failed to pay the named Plaintiffs and the New York Class minimum wages for each hour worked in violation of New York Labor Law,

Article 19 and the administrative regulations implementing such provisions, as set forth in 12 NYCRR 142-1.1, *et seq.*, including 12 NYCRR §142-2.1.

52. Defendants failed to pay the named Plaintiffs and the New York Class overtime premium pay for hours over 40 in each week of work, in violation of New York Labor Law, Article 19 and the administrative regulations implementing such provisions, as set forth in 12 NYCRR 142-1.1, *et seq.*, including 12 NYCRR §142-2.2.
53. Defendants failed to pay the named Plaintiffs and the New York Class all wages when due in violation of New York Labor Law, Article 6, and NY Labor Law §191, *et seq.*
54. Defendants make unlawful deductions from the named Plaintiffs' and the New York Classmembers' wages in violation of New York Labor Law Article 6, including but not limited to §193.
55. Defendants failed to pay the named Plaintiffs and Class members one hour's pay at the minimum hourly wage rate, in addition to the minimum wage for any day in which the spread of hours exceeds 10 hours as required by New York Labor Law Article 19 and 12 NYCRR §142-2.4. .
56. Defendants' failure to comply with New York Labor Law caused Plaintiffs to suffer loss of wages and interest thereon.
57. Defendants' failure to comply with New York Labor Law was willful.

WHEREFORE, Plaintiffs request that this Court enter an Order:

1. With respect to the FLSA violations:
 - a. Declaring that Defendants violated the FLSA;

- b. Approving this action as a collective action;
 - c. Declaring that Defendants' violations of the FLSA were willful;
 - d. Granting judgment to Plaintiffs and represented parties for their claims of unpaid wages as secured by the Fair Labor Standards Act, as well as an equal amount in liquidated damages and interest; and
 - e. Awarding Plaintiffs and represented parties their costs and reasonable attorneys' fees.
2. With respect to the Classes:
- a. Certifying this action as a class action;
 - b. Designating Plaintiffs as Class Representatives;
 - c. Designating the undersigned counsel as Class Counsel; and
 - d. Entering a declaratory judgment that the practices complained of herein are unlawful;
3. With respect to the New York state law claims:
- e. Granting judgment to the named Plaintiffs and Class members including awarding statutory, compensatory and liquidated damages;
 - f. Awarding Pre-judgment and Post-Judgment interest, as provided by law; and
 - g. Awarding Plaintiffs their attorneys' fees and costs of suit, including expert fees.

Dated: January 26, 2011

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dan Getman", is written over a horizontal line.

Dan Getman (DG4613)
Carol Richman (CR1256)
Getman & Sweeney, PLLC
9 Paradies Lane
New Paltz, NY 12561
phone: (845)255-9370
fax: (845) 255-8649
Email: dgetman@getmansweeney.com

ATTORNEYS FOR PLAINTIFFS

CONSENT TO SUE UNDER THE FLSA

I, Alfred Lewis Jr., hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Alert Ambulette Service Corp., Mark Hanukov, and any other associated parties.

I authorize Getman & Sweeney, PLLC, Dan Getman, Esq., and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 1.15.11



Alfred Lewis Jr.

CONSENT TO SUE UNDER THE FLSA

I, Matthew Lovell, hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Alert Ambulette Service Corp., Mark Hanukov, and any other associated parties.

I authorize Getman & Sweeney, PLLC, Dan Getman, Esq., and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 1-11-11


Matthew Lovell

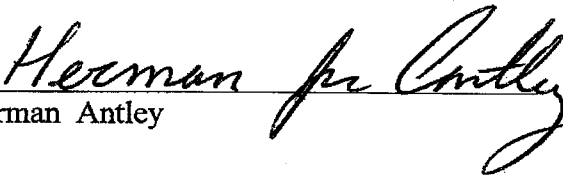
CONSENT TO SUE UNDER THE FLSA

I, Herman Antley, hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Alert Ambulette Service Corp., Mark Hanukov, and any other associated parties.

I authorize Getman & Sweeney, PLLC, Dan Getman, Esq., and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 01-07-11

Herman Antley
Herman Antley

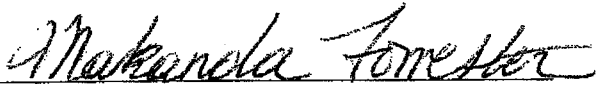


CONSENT TO SUE UNDER THE FLSA

I, Makanda Forrester, hereby consent to be a plaintiff in an action under the Fair Labor Standards Act, 29 U.S.C. §201 et seq., to secure any unpaid wages, minimum wages, overtime pay, liquidated damages, attorneys' fees, costs and other relief arising out of my employment with Alert Ambulette Service Corp., Mark Hanukov, and any other associated parties.

I authorize Getman & Sweeney, PLLC, Dan Getman, Esq., and any associated attorneys as well as any successors or assigns, to represent me in such action.

Dated: 01/06/11


Makanda Forrester