

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

**KEILA SEVERINO, KHADY GUEYE, and
DELSA JIMENEZ individually and on behalf of
all other similarly situated persons,**

Plaintiffs,

v.

AVONDALE CARE GROUP, LLC

Defendant.

Case No. 1:21-cv-10720-LGS-SDA

JURY TRIAL DEMANDED

**FIRST AMENDED CLASS AND
COLLECTIVE ACTION
COMPLAINT**

Plaintiffs Keila Severino, Khady Gueye, and Delsa Jimenez, individually and on behalf of all other similarly situated current and former employees of Defendant Avondale Care Group, LLC, (“Avondale”), bring this Collective and Class Action against Defendant and allege as follows:

OVERVIEW

1. Severino, Gueye, and Jimenez (“Named Plaintiffs”) bring claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* to recover unpaid overtime compensation. They bring these claims as a collective action on behalf of themselves and all current or former home health aides (“HHAs”) employed by Avondale Care Group, LLC within the three (3) years preceding the filing of a consent to sue.
2. Named Plaintiffs also bring claims under New York’s wage-and-hour laws, including New York Labor Law (“NYLL”) Articles 6 and 19 and their implementing regulations, both individually and as a class action pursuant to Fed. R. Civ. P. 23 (“New York Class”) for Avondale’s failure to pay overtime wages for all hours worked, failure to pay wages for all hours worked under 40 in a workweek, failure to pay spread of hours, and wage statement violations.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. Specifically, this collective action is brought under 29 U.S.C. § 216(b) of the FLSA.
4. This Court has subject matter jurisdiction under 28 U.S.C. § 1337 because the claims arise under federal laws regulating commerce.
5. This Court has supplemental jurisdiction over the state law claims by virtue of 28 U.S.C. § 1367, including § 1367(a).
6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Named Plaintiffs worked for Avondale in this District, the cause of action arose in this District, many Plaintiffs reside in this District, and Avondale resides in this District.

PARTIES

Plaintiffs

7. Severino worked for Avondale as a home health aide from approximately fall of 2018 until the fall of 2019.
8. She worked for Avondale in New York, including in Manhattan.
9. Severino's filed her consent to sue with the original complaint. See Docket No. 1-1.
10. Severino is a resident of Massachusetts and during her employment with Avondale she was a resident of New Jersey.
11. Gueye worked for Avondale as a home health aide from approximately January 2017 until October 2020.

12. She worked for Avondale in New York, including in Brooklyn, Manhattan, and Staten Island.
13. Gueye previously filed her consent to sue with the Court. See Docket No. 36-2.
14. Gueye is a resident of the Bronx, New York, and during her employment with Avondale she lived in the Bronx, New York.
15. Jimenez worked for Avondale as a home health aide from approximately July 2, 2020, to approximately March 14, 2022.
16. She worked for Avondale in the Bronx, New York.
17. Jimenez previously filed her consent to sue with the court. See Docket No. 43-1.
18. Jimenez is a resident of the Bronx, New York. During her employment with Avondale she was a resident of the Bronx and Manhattan.
19. The term “Plaintiffs” as used in this complaint refers to the Named Plaintiffs and any and all putative FLSA Class or New York Class Member, as defined below.

Defendant

20. Avondale is a licensed home care services agency, authorized and credentialed by the New York Department of Health to operate and provide home care services to elderly, ill and disabled individuals in New York City.
21. Avondale provides services throughout New York City and Westchester County.
22. Avondale is a limited liability company organized under the laws of New York State.
23. Avondale’s offices are located at 505 8th Avenue, Suite 200, New York, New York 10018.

FLSA COVERAGE

24. At all times hereinafter mentioned, Avondale is and has been an employer within the meaning of 29 U.S.C. § 203(d).
25. At all times hereinafter mentioned, Avondale is and has been an enterprise within the meaning of 29 U.S.C. § 203(r).
26. At all times hereinafter mentioned, Avondale has been an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1), in that said enterprise has and has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).
27. At all times hereinafter mentioned, Plaintiffs were individual employees engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

FACTS

28. Plaintiffs were employed by Avondale as home health aides who provided companionship and home care services for Avondale's elderly, ill, or disabled clients.
29. Due to their age and health conditions, Avondale's clients, or patients, were some of the country's most vulnerable people.
30. Many of the patients suffered from dementia, experienced memory deficits, were disoriented, lacked mobility, could not walk and had to be moved around in a wheelchair, were fall risks, confused, lived with severe anxiety, or were bedbound.

31. Many of the patients needed help with activities of daily living, including walking, preparing meals, feeding and bathing themselves, and taking their medicine.
32. Many patients wore diapers and often soiled themselves because were often unable to make it to the bathroom either during the day or while they slept.
33. As a result of their age and health conditions, many of Avondale's clients required constant care 24 hours a day and seven days a week.
34. Upon information and belief, for each patient there was a plan of care.
35. A plan of care defines the extent of the services to be provided by the HHA.
36. Avondale expected Plaintiffs to follow the patients' plan of care.
37. The plan of care is often printed out and posted on the patient's refrigerator.
38. Throughout their employment Avondale assigned Plaintiffs to care for patients for 24-hour live-in shifts.
39. Avondale regularly scheduled, and Severino worked, three (3) to seven (7) 24-hour shifts in a workweek.
40. Avondale regularly scheduled, and Gueye worked, four (4) to seven (7) 24-hour shifts in a workweek. For example, during the pay period from March 8, 2020, to March 14, 2020, Avondale scheduled, and Gueye worked, 24-hour live-in shifts on March 8, March 9, March 10, and March 11, 2020.
41. Avondale regularly scheduled Jimenez to work five (5) 24-hours shifts in a workweek. For example, during the pay period from February 20, 2022, to February 26, 2022, Avondale scheduled, and Jimenez worked, 24-hour live-in shifts on March 20, March 21, March 22, March 23, and March 24, 2022.
42. Avondale regularly scheduled Plaintiffs to work three or more shifts in a week.

43. Avondale prohibited Plaintiffs from leaving if another HHA did not show up to replace them. This resulted in Plaintiffs additional 24-hours shifts for many days and weeks in a row, and without a break.
44. At all times relevant, Plaintiffs, including the Named Plaintiffs, did not reside on their employer Avondale's premises.
45. Avondale paid Plaintiffs, including the Named Plaintiffs, the New York minimum wage for thirteen (13) hours of the 24-hour live-in shift.
46. During the pay period from March 8, 2020, to March 14, 2020, Avondale paid Gueye as follows:

Date	Amount	Rate	Hours Paid of the 24-Hour Live-In Shift	Cumulative Paid Hours
3/8/2020	\$195	\$15	13	13
3/9/2020	\$195	\$15	13	26
3/10/2020	\$195	\$15	13	39
3/11/2020	\$285	\$15 and \$22.50 for each hour over 40	13	52

47. The minimum wage applicable to Avondale employees working in New York City in 2020 was \$15 per hour.
48. Upon information and belief, Plaintiffs were not compensated in accordance with the FLSA or the NYLL because they were not paid for all hours in a 24-hour shift and they were not paid overtime wages for all hours worked in excess of forty (40) hours a week.
49. Upon information and belief, Avondale did not regularly schedule sleeping periods for the Plaintiffs.
50. Upon information and belief, Avondale did not schedule an 8-hour time for the Plaintiffs to sleep.

51. Upon information and belief, Avondale did not provide or facilitate a regularly scheduled sleep period for the Plaintiffs. Instead, the Plaintiffs were forced to sleep when able, at different times each shift, depending upon the circumstances that existed each shift.
52. Upon information and belief, Avondale did not schedule a time for Plaintiffs to sleep.
53. The plan of care that Plaintiffs were expected to follow did not provide a sleep period for Plaintiffs.
54. Upon information and belief, Plaintiffs' sleep periods were not regularly scheduled, their 8-hour sleep periods were interrupted to work, they did not receive five (5) hours of uninterrupted sleep, and Avondale did not pay them for all or any portion of their sleep periods.
55. Severino's sleep was regularly interrupted because she had to provide care for her assigned patient.
56. Severino's 8-hour sleep period was interrupted each week she worked a live-in shift.
57. Severino's patient needed care and attention at all hours of the night, and during her sleep period. For example, her assigned patient wore diapers to bed. Because the patient soiled themselves, Severino had to change the patient's diaper, clean the patient, and at times change the patient's clothes and bedding. Her patient needed help getting out of bed during the night, complained about pain, or asked for water. These sleep period interruptions occurred each week Severino worked.
58. Because Severino's sleeping period was interrupted to work, as described above, throughout her employment with Avondale, she did not receive eight (8) hours of sleep time that was free from work.

59. Because Severino's sleeping period was interrupted to work throughout her employment with Avondale, as described above, she did not receive five (5) hours of uninterrupted sleep.
60. Severino called her supervisor to complain about working through sleep time.
61. Severino's supervisor told her that Avondale only pays for thirteen (13) hours of a 24-hour shift.
62. Avondale knew or should have known that Severino's sleep time was regularly interrupted to care for her assigned patients and that her sleep time was not regularly scheduled.
63. Even though Severino's sleep period was interrupted to work, Severino complained about the work, and Avondale knew that she worked during her sleep period, Avondale did not pay Severino for all or any portion of the interrupted sleep period.
64. On multiple occasions, and throughout her employment with Avondale, Gueye complained to her supervisor about working during her sleep period.
65. Gueye's sleep was regularly interrupted because she had to provide care for her assigned patient.
66. The second to last patient Gueye cared for was bed-bound because the patient was paralyzed. Gueye cared for this patient in approximately 2018 and 2019.
67. The plan of care for Gueye's second to last patient required Gueye to check and, at times, change the patient's diaper every two hours.
68. Gueye was not provided adequate sleeping quarters.
69. For a period of time, Gueye had to sleep on a hard tile floor.

70. The last patient Gueye cared for, in 2020, was also bed-bound. The patient's plan of care required Gueye to change the patient's diaper approximately every two hours throughout the night. Because the patient was very big and heavy, and when the patient urinated or defecated during the night, it could take Gueye up to 30 minutes to change the person's clothing and put on a new diaper.
71. As a result of Gueye's sleep period interruptions and work obligations, during employment with Avondale, she did not receive five (5) hours of uninterrupted sleep or eight (8) hours of sleep time that was free from work.
72. Avondale knew or should have known that the plan of care required Gueye to work through her sleep period.
73. Even though Avondale knew or should have known that Gueye was expected to work through her sleep period, Avondale did not pay her for any portion of the 8-hour sleep period.
74. On multiple occasions, and throughout her employment with Avondale, Jimenez complained to her supervisor about working during her sleep period. The supervisors she complained to included Arlin and Elsa.
75. Jimenez's sleep was regularly interrupted because she had to provide care for her assigned patient. Indeed, Jimenez was regularly interrupted two times a night.
76. Jimenez's assigned patient suffered from dementia. The patient wore diapers and required regular diaper changes throughout the night. It could take Jimenez 20 minutes to change the person's clothing and put on a new diaper.

77. The patient would also walk around the home at night, and during Jimenez's sleep time. As a result, Jimenez needed to monitor the patient because the person was a fall risk and to prevent the person from leaving the home.
78. Sometimes the patient may turn on the stovetop during the night, and during Jimenez's sleep time, and Jimenez needed to turn the stovetop off.
79. As a result of Jimenez's work during the night, she slept approximately 15 to 20 minutes out of every hour.
80. As a result of Jimenez's sleep period interruptions and work obligations, she did not receive five (5) hours of uninterrupted sleep or eight (8) hours of sleep time that was free from work.
81. Avondale knew or should have known that the patient was a fall risk, and suffered from dementia, and thus Jimenez would work through her sleep period.
82. Even though Avondale knew or should have known that Jimenez was expected to work through her sleep period, Avondale did not pay her for any portion of the 8-hour sleep period.
83. Jimenez was required to sleep on an air mattress on the floor in the living room.
84. Upon information and belief, many plans of care required Plaintiffs to attend to their patients throughout the night. For example:
 - a. Some patients were bedridden and needed their diaper checked and changed every two hours if they soiled their diapers;
 - b. Some patients had dementia, memory deficits, were disoriented, confused, or suffered from anxiety. As a result, patients wandered around their apartment or

home during the night, and Plaintiffs needed to return the patients safely to their bed;

- c. When patients woke up and walked around the home at night, Plaintiffs had to monitor the patients to ensure that they did not walk out of their living quarters or fall, and had to make sure that they safely returned to their beds;
 - d. When patients walked in their sleep, Plaintiffs had to monitor the patients to ensure that they did not walk out of their living quarters, and had to put them back in their beds;
 - e. When patients yelled out in the middle of the night, and Plaintiffs' sleep was interrupted because they had to reassure the patients that they were safe;
 - f. Plaintiffs who stayed in the patients' bedrooms out of concern that patients would fall out of bed and injure themselves;
 - g. Plaintiffs took patients to the bathroom during their sleep period because Plaintiffs' assistance was necessary; and
 - h. Patients asked Plaintiffs to provide them with water throughout the night.
85. Despite the plans of care requiring work throughout Plaintiffs' sleep period, Avondale failed to pay them for this time.
86. Because of the patients' health conditions and need for supervision and assistance 24 hours a day, Avondale knew or should have known that Plaintiffs worked during their 8-hour sleep period to care for their assigned patients.
87. Although Avondale had direct or constructive knowledge of the work during Plaintiffs' sleep periods, Avondale did not pay Plaintiffs for work during their sleep periods.

88. Avondale did not pay for three hours of the 24-hour shift because that time was meant for three one-hour meal breaks.
89. Severino regularly worked during her three one-hour meal breaks to care for her patients. For example, during meal breaks Severino's patient's colostomy bag may break. As a result, she had to remove the patient's soiled clothes, clean the patient, and put clean clothes on the patient. Other times the patient requested help, water, or needed to go to the bathroom.
90. Each week, Severino worked during part or all of her meal breaks.
91. Due to work demands, Severino regularly received about 30 minutes of her meal break before she was interrupted to help the patient.
92. Gueye regularly worked during her three one-hour meal breaks to care for her patients.
93. Gueye received about 15 to 20 minutes for her meal break.
94. Gueye was regularly interrupted during her meal break because her assigned patient needed assistance, needed a diaper change, demanded food or a drink, or may have spilled something on the floor.
95. Each week, Jimenez worked during part or all of her meal breaks.
96. Jimenez was regularly interrupted to help her patient during her meal break for numerous reasons, including because Jimenez ate meals with the patient; the patient needed to go to the bathroom; Jimenez needed to look for something that the patient requested; Jimenez had to watch and calm the patient down because the patient was confused or scared due to dementia.
97. Due to work demands, Jimenez regularly received about 15 minutes of her meal break before she was interrupted to help the patient.

98. Jimenez told her supervisors that she did not receive her full meal break, but she was not paid for the time.
99. Upon information and belief, Plaintiffs worked during their meal breaks and were not paid for the time spent working. For example:
 - a. Plaintiffs fed patients and had to eat at the same time as the patients;
 - b. Some patients required constant supervision, and thus Plaintiffs did not receive a full 1-hour meal period free from work;
 - c. Some patients threw food at Plaintiffs and spit on Plaintiffs during the meal time;
 - d. Patients needed help going to the bathroom during Plaintiffs' meal breaks; and
 - e. Patients expected Plaintiffs to constantly work and care for the patients, and thus Plaintiffs were not permitted their uninterrupted meal period.
100. Avondale knew or should have known that Plaintiffs, including the Named Plaintiffs, worked during their meal breaks.
101. Avondale knew or should have known that Plaintiffs worked during their meal breaks because Plaintiffs complained to supervisors about not receiving the time to eat free of work, the plan of care and the patients' health conditions required Plaintiffs to care for patients during the meal periods.
102. Plaintiffs regularly worked more than forty (40) hours a week.
103. Plaintiffs were also regularly scheduled to and did work more than forty (40) hours in a week. Plaintiffs were regularly scheduled to work four to seven 24-hour live-in shifts in a workweek. As a result, they were paid for 52 to 91 hours of work.
104. Upon information and belief, other current and former HHAs of Avondale, including opt-ins, were subject to the same payroll practices described above.

105. As a result of Avondale's failure to pay Plaintiffs for time spent working during meal breaks and sleep periods, Plaintiffs were not paid for all of the hours they worked, including overtime wages.
106. Avondale failed to accurately track all of the hours Plaintiffs, including the Named Plaintiffs, worked during their 24-hour shifts.
107. Upon information and belief, Avondale did not provide Plaintiffs with a way to report hours worked through meal and sleep periods.
108. Avondale failed to track all of the hours Plaintiffs, including the Named Plaintiffs, worked and whether they received bona fide sleep time and meal breaks.
109. When Plaintiffs complained about working through meal breaks and sleep period, Avondale did not investigate to make sure it accurately tracked and recorded the hours Plaintiffs worked.
110. Avondale suffered or permitted Plaintiffs to work during their meal and sleep breaks.
111. Avondale scheduled Plaintiffs, including the Named Plaintiffs, to work more than ten (10) hours in a day.
112. Plaintiffs, including the Named Plaintiffs, regularly worked more than ten (10) hours in a day.
113. Avondale did not pay Plaintiffs, including the Named Plaintiffs, an additional one hour's pay at the New York minimum hourly rate when they worked more than ten (10) hours in a day.
114. The wage statements that Avondale provided to Plaintiffs did not list the accurate number of hours worked.

115. The wage statements that Avondale provided to Plaintiffs did not list the accurate wages Plaintiffs earned.
116. Avondale willfully violated the FLSA.
117. Avondale willfully failed to pay Plaintiffs, including the Named Plaintiffs, for all hours worked during meal breaks and sleep periods.
118. Avondale willfully violated the FLSA based on the facts above, including because:
 - a. Avondale knew that Plaintiffs were scheduled to work 24-hours;
 - b. Plaintiffs complained about work during meal and sleep periods to supervisors;
 - c. Plaintiffs complained that patients needed constant care and attention during their 24-hour shift, including during the meal and sleep periods;
 - d. Avondale's supervisors told Plaintiffs that Avondale only paid for 13 of the 24 hours;
 - e. Avondale knew or should have known that the plans of care required work during meal and sleep periods;
 - f. Avondale knew that patients needed constant care and attention during the 24-hour shift, including during meal breaks and sleep periods;
 - g. Upon information and belief, Avondale knew that it did not schedule Plaintiffs' sleep periods; and
 - h. Upon information and belief, Avondale knew that work during meal and sleep periods was not recorded in its timekeeping system and thus the work was unpaid.
119. Upon information and belief, Plaintiffs complained to their supervisors about working through meal and sleep period.

120. Upon information and belief, supervisors told Plaintiffs that they would only be paid for 13 hours of the 24-hour shift.
121. Upon information and belief, when Plaintiffs complained about work through the meal or sleep periods, supervisors told Plaintiffs that they were at the mercy of the patients and did not ensure that Plaintiffs were paid for the time.
122. Upon information and belief, Avondale did not inform Plaintiffs that they could report hours worked during their meal and sleep periods.
123. Avondale knew or should have known that its time records were inaccurate because the Plaintiffs did not include time worked through meal and sleep periods.
124. Upon information and belief, Avondale did not ask Plaintiffs to report time worked during meal and sleep periods.

COLLECTIVE ACTION DEFINITION

125. The Named Plaintiffs bring this case as a collective action under 29 U.S.C. § 216(b), comprised of:

All current or former home health aides employed by Avondale Care Group, LLC within the three years preceding the filing of a consent to sue. (“FLSA Class Members”).

126. Avondale is liable under the FLSA for failing to pay overtime wages for all hours Plaintiffs worked.
127. The Named Plaintiffs and the FLSA Class Members work or have worked for Avondale and have been subjected to Avondale’s policy and pattern or practice of failing to pay for all overtime wages for all hours worked in excess of forty (40) hours per week.
128. Plaintiffs’ claim for overtime pay is similar to the claim of other FLSA Class Members and their claims depend on similar factual and legal questions including, but not limited to, whether Avondale knew or should have known that Plaintiffs’ and the FLSA Class

Members' sleep periods were not regularly scheduled; whether Plaintiffs and the FLSA Class Members worked during meal and sleep periods; whether Avondale failed and/or refused to pay Plaintiffs and the FLSA Class Members overtime wages for all hours worked during the 24-hour shift; and whether Avondale's violations were willful.

129. There are numerous similarly situated employees who have been underpaid and injured in violation of the FLSA who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join it. Those similarly situated employees are known to Avondale, are readily identifiable, and can be located through Avondale records. Notice should be sent to the FLSA Class pursuant to 29 U.S.C. § 216(b).

RULE 23 NEW YORK CLASS ACTION DEFINITION

130. The Named Plaintiffs seek to certify a New York Class of similarly situated employees under Fed. R. Civ. P. 23. The New York Class is defined as:

All current or former home health aides employed in New York by Avondale, who worked a 24-hour shift in one or more weeks at any time since six years prior to filing of complaint. ("New York Class Members").

131. Upon information and belief, the New York Class is composed of more than forty (40) individuals.
132. The Named Plaintiffs and the New York Class Members work or have worked for Avondale as home health aides and have been subjected to Avondale's policy and pattern or practice of: failing to pay for all overtime wages for hours worked in excess of forty (40) hours per week; failing to pay all straight time wages for hours worked up to forty (40) in workweek, failing to pay spread of hours pay; and failing to provide accurate wage statements.

133. Avondale acted and refused to act on grounds generally applicable to the New York Class Members, thereby making declaratory relief with respect to the New York Class appropriate.
134. There are questions of law and fact common to the New York Class including but not limited to:
 - a. whether the NYLL requires Avondale to pay the New York Class Members overtime wages;
 - b. whether Avondale failed to pay the New York Class Members their wages due in each pay period;
 - c. whether Avondale failed and/or refused to pay the New York Class Members overtime pay for all hours worked in excess of forty (40) hours per workweek;
 - d. whether Avondale correctly calculated and compensated the New York Class Members for hours worked in excess of forty (40) per workweek;
 - e. whether Avondale must pay the New York Class Members for all hours of their 24-hour shifts;
 - f. whether Avondale failed to keep true and accurate time records for all hours worked by the New York Class Members;
 - g. the nature and extent of New York Class-wide injury and the appropriate measure of damages for the New York Class Members;
 - h. whether Avondale knew or should have known that the New York Class Members worked through their meal and/or sleep periods;
 - i. whether Avondale failed to pay spread of hours pay;

- j. whether Avondale failed to provide accurate wage statements that reflected the accurate number of hours that the New York Class Members worked; and
 - k. whether Avondale failed to provide accurate wage statements that reflected the accurate pay the New York Class Members earned.
- 135. The claims of the Named Plaintiffs are typical of the claims of the New York Class they seek to represent.
- 136. The Named Plaintiffs and the New York Class Members work or have worked for Avondale as home health aides and have been subjected to its policy and pattern or practice of failing to pay for all hours worked and overtime wages for hours worked in excess of forty (40) hours per week. Avondale acted and refused to act on grounds generally applicable to the New York Class Members, thereby making declaratory relief with respect to the New York Class Members appropriate.
- 137. The Named Plaintiffs will fairly and adequately represent and protect the interests of the New York Class Members.
 - a. The Named Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the New York Class Members to represent their interests fairly and adequately.
 - b. The Named Plaintiffs recognize that as class representatives, they must represent and consider the interests of the New York Class Members just as they would represent and consider their own interests.
 - c. The Named 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 New York Class Members.

- d. The Named Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class Members.
 - e. The Named Plaintiffs understand that in order 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.
138. The Named Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.
139. 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 a corporate defendant. The New York Class Members have been damaged and are entitled to recovery as a result of Avondale's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of each class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

**FIRST CAUSE OF ACTION
(FAIR LABOR STANDARDS ACT: UNPAID OVERTIME WAGES)**

140. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

141. Avondale failed to pay overtime wages to the Named Plaintiffs and the FLSA Class Members for all hours worked over forty (40) in a workweek as required by the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* and its implementing regulations.
142. Avondale's failure to pay proper overtime wages for each hour worked over forty (40) per week was willful within the meaning of the FLSA.
143. Avondale's failure to comply with the FLSA overtime protections caused the Named Plaintiffs and the FLSA Class Members to suffer loss of wages and interest thereon, and they are entitled to recovery of unpaid overtime wages, liquidated damages, prejudgment interest, attorneys' fees, costs, and any other compensation pursuant to 29 U.S.C. § 201, *et seq.*

**SECOND CAUSE OF ACTION
(NEW YORK LABOR LAW, ARTICLE 19: UNPAID OVERTIME WAGES)**

144. The Named Plaintiffs re-allege and incorporates by reference all allegations in all preceding paragraphs.
145. Avondale failed to pay the Named Plaintiffs and New York Class Members wages for all the hours they worked and overtime wages for hours worked over forty (40) in a workweek as required by NYLL, Article 19, § 650, *et seq.*, and 12 NYCRR § 142-2.2.
146. Avondale's failure to comply with New York wage-and-hour protections caused the Named Plaintiffs and New York Class Members to suffer loss of wages and interest thereon.

**THIRD CAUSE OF ACTION: UNPAID NEW YORK SPREAD OF HOURS PAY
(12 N.Y.C.R.R. § 142-2.4: On behalf of the Named Plaintiffs and the New York Class)**

147. The Named Plaintiffs and the New York Class Members were required to work in excess of ten (10) hours a day without being compensated for the legally mandated spread of hours pay. This practice is in violation of 12 N.Y.C.R.R. § 142-2.4.
148. Avondale's failure to pay spread of hours pay was willful.
149. By reason of the foregoing Avondale is liable to the Named Plaintiffs and the New York Class Members in an amount to be determined at trial, plus costs and attorneys' fees.

**FOURTH CAUSE OF ACTION: NEW YORK WAGE STATEMENTS
(New York Labor Law Article 6, § 195 (3): On behalf of the Named Plaintiffs and the New York Class)**

150. New York Labor Law § 195(3) requires that employers furnish non-exempt employees such as the Named Plaintiffs and the New York Class Members with a statement with every payment of wages listing their regular hourly rate or rates of pay; their overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.
151. Avondale has engaged in a widespread pattern, policy, and practice of violating New York Labor Law § 195(3) requirement to provide accurate wage statements as detailed in this Class and Collective Action Complaint.
152. Avondale's failure to comply with New York Labor Law § 195(3) was willful.
153. By reason of the foregoing, Avondale is liable to the Named Plaintiffs and the New York Class Members in an amount to be determined at trial, plus costs and attorneys' fees.

RELIEF SOUGHT

WHEREFORE, the Named Plaintiffs pray for judgment against Avondale as follows:

1. For an Order recognizing this proceeding as a collective action under § 216(b) of the FLSA and ordering notice to the FLSA Class Members at the earliest opportunity to ensure class their claims are not lost to the FLSA statute of limitations;
2. For an Order finding Avondale liable for unpaid back wages due to the Named Plaintiffs and the FLSA Class Members and for liquidated damages equal in amount to the unpaid compensation found due Plaintiffs under the FLSA;
3. For an Order awarding the Named Plaintiffs and the FLSA Class Members the costs of this action as provided under the FLSA;
4. For an Order awarding the Named Plaintiffs and the FLSA Class Members their attorneys' fees as provided under the FLSA;
5. For an Order awarding the Named Plaintiffs and the FLSA Class Members pre-judgment and post-judgment interest at the highest rates allowed by law; and
6. With respect to the New York Class:
 - a. Certifying this action as a class action;
 - b. Designating the Named Plaintiffs as the Class Representatives;
 - c. Declaring that the practices complained of herein are unlawful under New York state law;
 - d. Appointing the undersigned as class counsel;
 - e. Ordering appropriate equitable and injunctive relief to remedy Avondale's violations of state law, including but not necessarily limited to an order enjoining Avondale from continuing its unlawful practices;

- f. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by Avondale according to proof;
 - g. Awarding pre-judgment and post-judgment interest, as provided by law;
 - h. Ordering such other injunctive and equitable relief as the Court may deem just and proper; and
 - i. Awarding the Named Plaintiffs and the New York Class Members their attorneys' fees and costs of suit, including expert fees and costs.
7. For an Order granting such other and further relief as may be necessary and appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: May 27, 2022

Respectfully Submitted,

/s/ Matt Dunn

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