JUDGE FORMAN

13 CIV 6518

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER FRATICELLI, individually and on behalf of other persons similarly situated who were employed by MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY and/or any other entities affiliated with or controlled by MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY,

Plaintiffs,

- against -

MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY, and/or any other entities affiliated with or controlled by MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY,

Defendants.

Case No.

CLASS ACTION COMPLAINT

Plaintiff, by his attorneys, Virginia & Ambinder, LLP and Leeds Brown Law, P.C., alleges upon knowledge to himself and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as "FLSA"), 29 U.S.C. §§ 206, 207 and 216(b); New York Labor Law §§ 650 *et seq* and 663; New York Labor Law § 190 *et seq.*; and 12 New York Codes, Rules and Regulations (hereinafter referred to as "NYCRR") § 142-2.1; to recover unpaid minimum and overtime wages owed to Plaintiff and all similarly situated persons who are presently or were formerly employed by MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY and/or any other entities affiliated with or controlled by MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY (hereinafter referred to as "Defendants").

2. Beginning in approximately 2007 and, upon information and belief, continuing through the present, Defendants have wrongfully withheld wages from Plaintiff and other similarly situated individuals who worked for Defendants.

3. Beginning in approximately 2007 and, upon information and belief, continuing through the present, Defendants have wrongfully classified Plaintiff and others similarly situated as exempt from minimum and overtime wage requirements.

4. Beginning in approximately 2007 and, upon information and belief, continuing through the present, Defendants have engaged in a policy and practice of failing to pay their employees minimum and overtime wages as required by applicable federal and state law.

5. Plaintiff has initiated this action seeking for himself, and on behalf of all similarly situated employees, all compensation that they were deprived of, plus interest, damages, attorneys' fees and costs.

JURISDICTION

6. Jurisdiction of this Court is invoked pursuant to FLSA, 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 of the claims brought under New York Labor Law.

7. The statute of limitations under FLSA, 29 U.S.C. § 255(a), for willful violations is three (3) years.

8. The statute of limitations under New York Labor Law § 198(3) is six (6) years.

VENUE

9. Venue for this action in the Southern District of New York under 28 U.S.C. § 1391(b) is appropriate because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

THE PARTIES

10. Plaintiff CHRISTOPHER FRATICELLI is an individual who is currently a resident of New York and was employed by Defendants from approximately September 2011 until January 2012.

11. Although the Defendants misclassified Plaintiff and other members of the putative class as unpaid interns, Plaintiff is a covered employee within the meaning of the NYLL.

12. Upon information and belief, Defendant MSG HOLDINGS, L.P. is a foreign business corporation organized and existing under the laws of Delaware and authorized to do business in New York, with its principal place of business at Two Pennsylvania Plaza, New York, New York, and is engaged in the sports and entertainment industry.

13. Upon information and belief, Defendant THE MADISON SQUARE GARDEN COMPANY is a foreign business corporation organized and existing under the laws of Delaware and authorized to do business in New York, with its principal place of business at Two Pennsylvania Plaza, New York, New York, and is engaged in the sports and entertainment industry.

14. Defendants own and operate various teams, event venues, and media outlets, including but not limited to the New York Knicks, New York Rangers, New York Liberty, Madison Square Garden, MSG Networks, MSG Media, Fuse, Radio City Music Hall, and The Beacon Theatre.

15. Defendants engage in interstate commerce, produce goods for interstate commerce, and/or handle, sell, or work on goods or materials that have been moved in or produced for interstate commerce.

16. Upon information and belief, Defendants' annual gross volume of sales made or business done is not less than $500,000.

CLASS ALLEGATIONS

17. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 16 hereof.

18. This action is properly maintainable as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), and as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.

19. This action is brought on behalf of the Plaintiff and a class consisting of similarly situated employees who worked for Defendants as interns or "student associates", and were thus misclassified as exempt from minimum and overtime wage requirements.

20. Plaintiff and potential plaintiffs who elect to opt-in as part of the collective action are all victims of the Defendants' common policy and/or plan to violate the FLSA by (1) failing to pay all earned wages; (2) misclassifying Plaintiff and members of the putative collective as exempt from minimum and overtime wage requirements; (3) failing to provide the statutory minimum hourly wage for all hours worked pursuant to 29 U.S.C. § 206; (4) failing to provide overtime wages, at the rate of one and one half times the regular rate of pay, for all time worked in excess of 40 hours in any given week pursuant to 29 U.S.C. § 207.

21. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 500 employees. In addition, the names of all potential members of the putative class are not known or knowable without Defendants' records or discovery.

22. The questions of law and fact common to the putative class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to: (1) whether Defendants failed to pay Plaintiff and members of the putative class all earned wages; (2) whether the Defendants misclassified Plaintiff and members of the putative

class as exempt from minimum and overtime wages; (3) whether the Defendants required Plaintiff and members of the putative class to perform work on its behalf and for its benefit for which they were not compensated; and (4) whether the Defendants failed to pay the statutory minimum wage rate, in violation of New York state law; (5) whether the Defendants failed to pay overtime wages, at the rate of one and one half times the regular rate of pay, for all hours worked in excess of 40 hours in any given week in violation of New York state law.

23. The claims of the Plaintiff are typical of the claims of the putative class. The Plaintiff and putative class members were all subject to Defendants' policies and willful practices of failing to pay employees all earned minimum and overtime wages. Plaintiff and putative class members have thus sustained similar injuries as a result of the Defendants' actions.

24. Upon information and belief, Defendants uniformly apply the same employment policies, practices, and procedures to all interns who work at Defendants' locations.

25. Plaintiff and his counsel will fairly and adequately protect the interests of the putative class. Plaintiff has retained counsel experienced in complex wage and hour collective and class action litigation.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The individual Plaintiff and putative class action members lack the financial resources to adequately prosecute separate lawsuits against Defendants. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendants' policies.

FACTS

27. Beginning in or about 2007 until the present, Defendants employed the Plaintiff and other members of the putative class as interns to perform various tasks related and necessary to the maintenance of Defendants' operations.

28. Named Plaintiff Christopher Fraticelli was employed by the Defendants from approximately September 2011 until January 2012.

29. While employed as an intern for Defendants, Plaintiff Fraticelli's primary job duties included data entry, tracking inventory, opening packages and organizing the items contained within, along with other tasks necessary to the maintenance of Defendants' operations.

30. Throughout the length of his employment, Plaintiff Fraticelli typically worked five days each week, approximately seven to eight hours each day.

31. Plaintiff Fraticelli sometimes worked more than 40 hours each week, as many as approximately 55 hours in a week, but did not receive overtime wages at one and one-half times his regular hourly wage for all the hours over 40 that he worked each week.

32. Defendants did not provide any compensation to Plaintiff and members of the putative class for the hours worked.

33. Defendants have benefited from the work that Plaintiff and members of the putative class performed.

34. Defendants would have hired additional employees or required existing staff to work additional hours had Plaintiff and the members of the putative class not performed work for Defendants.

35. Defendants did not provide academic or vocational training to Plaintiff or members of the putative class.

36. Defendants' unlawful conduct has been pursuant to a corporate policy or practice of minimizing labor costs by denying Plaintiff and members of the putative class wages in violation of the FLSA and NYLL.

37. Defendants' unlawful conduct, as set forth in this Complaint, has been intentional, willful, and in bad faith, and has caused significant damages to Plaintiff and members of the putative class.

38. While working for Defendants, Plaintiff and the members of the putative class were regularly required to perform work for Defendants, without receiving minimum and overtime wages as required by applicable federal and state law.

39. Plaintiff and the members of the putative class were required to work more than forty hours in a week, yet they did not receive any wages for these hours, and certainly not overtime compensation.

FIRST CAUSE OF ACTION:
FLSA MINIMUM WAGE COMPENSATION

40. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 39 hereof.

41. Pursuant to 29 U.S.C. § 206, "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: (1) except as otherwise provided in this section, not less than -- (A) $5.85 an hour, beginning on the 60th day after May 25, 2007; (B) $6.55 an hour, beginning 12 months after that 60th day; and (C) $7.25 an hour, beginning 24 months after that 60th day [July 24, 2009]."

42. MSG HOLDINGS, L.P. is an employer, within the meaning contemplated, pursuant to 29 U.S.C. § 203(d).

43. THE MADISON SQUARE GARDEN COMPANY is an employer, within the meaning contemplated, pursuant to 29 U.S.C. § 203(d).

44. Plaintiff and other members of the putative collective action are employees, within the meaning contemplated, pursuant to 29 U.S.C. § 203(e).

45. Plaintiff and other members of the putative collective action, during all relevant times, engaged in commerce or in the production of goods for commerce, or were employed in an enterprise engaged in commerce or in the production of goods for commerce.

46. None of the exemptions of 29 U.S.C. § 213 apply to Plaintiff or other similarly situated employees.

47. Defendants violated the FLSA by failing to pay Plaintiff and other members of the putative collective action minimum wages for all hours worked in any given week.

48. Upon information and belief, the failure of Defendants to pay Plaintiff and other members of the putative collective action their rightfully-owed wages was willful.

49. By the foregoing reasons, Defendants are liable to Plaintiff and members of the putative collective action in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest and attorneys' fees and costs.

SECOND CAUSE OF ACTION:
NEW YORK MINIMUM WAGE COMPENSATION

50. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 49 hereof.

51. Title 12 NYCRR § 142-2.1 states that, "[t]he basic minimum hourly rate shall be: (a) $5.15 per hour on and after March 31, 2000; (b) $6.00 per hour on and after January 1, 2005; (c) $6.75 per hour on and after January 1, 2006; (d) $7.15 per hour on and after January 1, 2007; (e) $7.25 per hour on and after July 24, 2009; or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions."

52. New York Labor Law § 663 provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorneys' fees."

53. Pursuant to Labor Law § 651, the term "employer" includes "any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer."

54. Pursuant to New York Labor Law §§ 190, *et seq.*, 650, *et seq.*, and the cases interpreting same, MSG HOLDINGS, L.P. is an "employer."

55. Pursuant to New York Labor Law §§ 190, *et seq.*, 650, *et seq.*, and the cases interpreting same, THE MADISON SQUARE GARDEN COMPANY is an "employer."

56. Pursuant to Labor Law § 651, the term "employee" means "any individual employed or permitted to work by an employer in any occupation."

57. As persons employed for hire by Defendants, Plaintiff and members of the putative class are "employees," as understood in Labor Law § 651.

58. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants and protect Plaintiff and members of the putative class.

59. Upon information and belief, Defendants violated New York Labor Law § 650 et seq. and 12 NYCRR § 142-2.1 by failing to pay Plaintiff and other members of the putative class minimum wages for all hours worked in any given week.

60. Upon information and belief, the failure of Defendants to pay Plaintiff and other members of the putative class their rightfully-owed wages was willful.

61. By the foregoing reasons, Defendants have violated New York Labor Law § 650 et seq. and 12 NYCRR § 142-2.1, and are liable to Plaintiff and other members of the putative class action in an amount to be determined at trial, plus damages, interest, attorneys' fees and costs.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
FLSA OVERTIME COMPENSATION

62. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 61 hereof.

63. Pursuant to 29 U.S.C § 207, "no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

64. Upon information and belief, Defendants violated the FLSA by failing to pay Plaintiff and other members of the putative collective overtime wages at a rate of one and one-half times the normal rate of pay for all hours worked over 40 in any given week.

65. Upon information and belief, the failure of Defendants to pay Plaintiff and other members of the putative collective their rightfully owed wages was willful.

66. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the putative collective in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEW YORK OVERTIME COMPENSATION

67. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 66

hereof.

68. 12 NYCRR §142-2.2 requires that "[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate...."

69. New York Labor Law Article 19 § 663, provides that "[i]f any employee is paid by his employer less than the wage to which he is entitled under the provisions of this article, he may recover in a civil action the amount of any such underpayments, together with costs and such reasonable attorney's fees."

70. Upon information and belief, Plaintiff and other members of the putative class worked more than forty hours a week while working for Defendants.

71. Upon information and belief, Plaintiff and other members of the putative class did not receive overtime compensation for all hours worked in excess of forty hours in any given week.

72. Consequently, by failing to pay to Plaintiff and other members of the putative class overtime compensation, Defendants violated New York Labor Law Article 19 § 663 and 12 NYCRR § 142-2.2.

73. Upon information and belief, Defendants' failure to pay overtime compensation to the Plaintiff and members of the putative class was willful.

74. By the foregoing reasons, Defendants have violated New York Labor Law Article 19 § 663 and 12 NYCRR § 142-2.2 and are liable to Plaintiffs and members of the putative class action in an amount to be determined at trial, plus interest, attorneys' fees, and costs.

FIFTH CAUSE OF ACTION:
NEW YORK FAILURE TO PAY WAGES

75. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through 74 hereof.

76. Pursuant to Article Six of the New York Labor Law, workers, such as Plaintiff and other members of the putative class, are protected from wage underpayments and improper employment practices.

77. Pursuant to New York Labor Law § 652, and the supporting New York State Department of Labor Regulations, "every employer shall pay to each of its employees for each hour worked a wage of not less than . . . $7.15 on and after January 1, 2007, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors, or such other wage as may be established in accordance with the provisions of this article."

78. Pursuant to New York Labor Law § 190, the term "employee" means "any person employed for hire by an employer in any employment."

79. As persons employed for hire by Defendants, Plaintiff and other members of the putative class are "employees," as understood in Labor Law § 190.

80. Pursuant to New York Labor Law § 190, the term "employer" includes "any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service."

81. As entities that hired the Plaintiff and other members of the putative class, MSG HOLDINGS, L.P. and THE MADISON SQUARE GARDEN COMPANY are "employers."

82. The agreed upon wage rate for Plaintiff and other members of the putative class was within the meaning of New York Labor Law §§ 190, 191 and 652.

83. Pursuant to New York Labor Law § 191 and the cases interpreting the same, workers such as Plaintiff and other members of the putative class are entitled to be paid all their

weekly wages "not later than seven calendar days after the end of the week in which the wages are earned."

84. In failing to pay the Plaintiff and other members of the putative class proper wages, Defendants violated New York Labor Law § 191.

85. Pursuant to New York Labor Law § 193, "No employer shall make any deduction from the wages of an employee," such as Plaintiff and other members of the putative class, that is not otherwise authorized by law or by the employee.

86. By withholding wages from Plaintiff and other members of the putative class, pursuant to New York Labor Law § 193 and the cases interpreting the same, Defendants made unlawful deductions in wages owed to Plaintiff and other members of the putative class.

87. Upon information and belief, Defendants' failure to pay Plaintiff and members of the putative class minimum wages was willful.

88. By the foregoing reasons, Defendants have violated New York Labor Law § 198 and are liable to Plaintiff and other members of the putative class in an amount to be determined at trial, plus damages, interest, attorneys' fees and costs.

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated who were employed by Defendants, demand judgment:

(1) on the first cause of action against Defendants, in an amount to be determined at trial plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs;

(2) on the second cause of action against Defendants, in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys' fees and costs;

(3) on the third cause of action against Defendants, in an amount to be determined at trial, plus damages, interest, attorneys' fees and costs, pursuant to the cited New York Labor Law provisions;

(4) on the fourth cause of action against Defendants, in an amount to be determined at trial, plus damages, interest, attorneys' fees and costs, pursuant to the cited New York Labor Law provisions;

(5) on the fifth cause of action against Defendants, in an amount to be determined at trial, plus damages, interest, attorneys' fees and costs, pursuant to the cited New York Labor Law provisions;

(6) together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
September 16, 2013

VIRGINIA & AMBINDER, LLP

By: _____

Lloyd R. Ambinder
Suzanne B. Leeds
111 Broadway, Suite 1403
New York, New York 10006
Tel: (212) 943-9080
Fax: (212) 943-9082
lambinder@vandallp.com

LEEDS BROWN LAW, P.C.
Jeffrey K. Brown
Daniel Markowitz
Michael Tompkins
One Old Country Road, Suite 347
Carle Place, NY 11514
Tel: (516) 873-9550
jbrown@leedsbrownlaw.com

Attorneys for Plaintiff and the putative class