

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

ADAM KOLB, individually and on behalf of all other  
persons similarly situated,

Plaintiffs,

- against -

BANKERS CONSECO LIFE INSURANCE COMPANY,

Defendants.

Index No: 13 00 5116

SUMMONS

Plaintiff designates  
COUNTY OF NASSAU  
as the place of trial.

The basis of the venue is DEFENDANT'S  
PLACE OF BUSINESS

RECEIVED

APR 26 2013

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

To the above named defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Carle Place, New York  
April 26, 2013

*Attorney(s) for Plaintiffs*  
LEEDS BROWN LAW, P.C.  
One Old Country Road, Suite 347  
Carle Place, New York 11514  
(516) 873-9550

To: Bankers Consec Life Insurance Company  
350 Jericho Turnpike, Suite 304  
Jericho, NY 11753

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NASSAU COUNTY  
COUNTY CLERK'S OFFICE

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COMPANY,

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Case No.

13-005114

CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, Leeds Brown Law, P.C. and Virginia & Ambinder, LLP, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

**PRELIMINARY STATEMENT**

1. This action is brought pursuant to New York Labor Law ("NYLL") § 190 *et seq.*, NYLL § 650 *et seq.*; 12 New York Codes, Rules, and Regulations ("NYCRR") § 142-2.1; and 12 NYCRR § 142.2, to recover unpaid wages owed to Plaintiff and all similarly situated persons who are presently or were formerly employed by Bankers Conseco Life Insurance Company ("Bankers Conseco" or "Defendant").

2. Beginning in 2007 and continuing through the present, Defendants employed numerous individuals to sell and market financial products and investment vehicles ("Plaintiffs").

3. Beginning in approximately 2007 and continuing through the present, Defendants have engaged in a policy and practice of wrongfully classifying Plaintiff and others similarly situated as exempt from minimum wage and overtime compensation.

4. As a result of Defendant's misclassification, beginning in approximately 2007 and continuing through the present, Defendant has engaged in a policy and practice of failing to pay

minimum wage and overtime compensation to Plaintiffs.

5. Defendants instituted this practice of depriving the Plaintiffs of the basic compensation for work performed as mandated by state law.

6. Plaintiff has initiated this action, on behalf of himself and Plaintiffs similarly situated, seeking all compensation, including minimum wages and overtime compensation (if applicable) that each employee was deprived of, plus interest, attorneys' fees and costs.

### **THE PARTIES**

#### **Plaintiff**

##### **Adam Kolb**

7. Plaintiff Adam Kolb ("Kolb") is an adult individual who is a resident of New York.

8. Kolb was employed by Defendant as a Financial Sales Representative in New York from approximately February 2008 until July 2008.

9. Kolb is a covered employee within the meaning of NYLL.

#### **Defendant**

##### **Bankers Conseco Life Insurance Company**

10. Defendant Bankers Conseco Life Insurance Company is a domestic company organized and existing under the laws of the State of New York, with its home office located at: 350 Jericho Turnpike, Suite 304, Jericho, NY 11753, and is engaged in the business of selling and marketing financial products and services.

11. Defendant is engaged in the insurance business, as that term is defined in Article 11 of the New York Insurance Law, § 1101 *et seq.*

12. Defendant has had substantial control over Plaintiff's working conditions and over the unlawful policies and practices alleged herein.

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

### **CLASS ALLEGATIONS**

14. Plaintiffs bring this claim for relief as a Class Action pursuant to Article 9 of the New York Civil Practice Law and Rules, on behalf of all Plaintiffs employed by Defendant engaged in or training to engage in selling and attempting to sell securities and insurance for Bankers Consec Life Insurance Company within the State of New York between April 2007 and the date of final judgment in this matter (the "Class Period").

15. All said persons, including Plaintiffs, are referred to herein as the "Class." The Class members are readily ascertainable. The number and identity of the Class members are determinable from the records of Defendant. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants.

16. The proposed Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Defendant. Upon information and belief, there are more than one hundred (100) members of the Class.

17. Plaintiff's claims are typical of those claims which could be alleged by any member of the Class, and the relief sought is typical of the relief which would be sought by each member of the Class in separate actions. All the Class members were subject to some or all of

the same corporate practices of Defendant, as alleged herein, of failing to pay minimum wage and overtime compensation. Defendant's New York state-wide policies and practices affected all Class members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts to each Class member. Plaintiff and other Class members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

18. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interests antagonistic to the Class. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented plaintiffs in wage and hour cases.

19. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender, along with the risk of inconsistent judgments.

20. There are questions of law and fact common to the Class which predominate over any questions affecting only individual Class members including:

- a) Whether Defendant employed Plaintiff and the Class within the meaning of the NYLL?
- b) Whether Defendant paid Plaintiff and the Class members the minimum wage rate for all hours worked?
- c) What are and were the policies, practices, programs, procedures, protocols, and

plans for Defendant regarding the types of work and labor for which Defendants did not pay the Class members the minimum wage?

d) At what common rate, or rates subject to common methods of calculation, were Defendants required to pay the Class members for their work?

e) Whether Defendant properly compensated Plaintiff and Class members for overtime where applicable?

### **FACTS**

21. Plaintiff and all members of the Class constituted “employees” as that term is defined under NYLL § 190 *et seq.* and case law interpreting the same.

22. Defendant unlawfully denied Plaintiff and Class members of the state minimum wage for regular and overtime hours worked.

23. While working for Defendant, Plaintiff Kolb, and, upon information and belief, the other putative class members, were not paid any hourly rate for the hours they worked.

24. Plaintiff and, upon information and belief, other members of the class worked in excess of forty (40) hours in certain weeks.

25. During weeks in which they worked more than forty (40) hours, Defendant failed to pay Plaintiffs and other members of the putative class overtime compensation at the rate of time and one half their regular rate of pay.

26. Defendants committed the foregoing acts against the Plaintiff and the Class.

### **FIRST CLAIM FOR RELIEF:**

**New York State Minimum Wage Act, New York Labor Law § 650 *et seq.*  
Brought by Plaintiff on Behalf of Himself and the Class**

27. Plaintiff, on behalf of himself and members of the Class realleges and incorporates by reference all previous paragraphs.

28. Defendant knowingly paid the Plaintiff and members of the Class less than wages required under the New York State Minimum Wage Act, Labor Law § 650 *et seq.*, and supporting regulations of the New York State Department of Labor.

29. Defendant did not pay Plaintiff minimum wage for all hours worked.

30. As a result of Defendant's violations of the NYLL, Plaintiff and the Class members are entitled to recover their respective unpaid compensation, attorneys' fees and costs, interest, and such other legal and equitable relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF:**  
**Overtime Compensation Brought by Plaintiff**  
**on Behalf of Himself and the Class**

31. Plaintiff, on behalf of himself and members of the Class, reallege and incorporate by reference all previous paragraphs.

32. Pursuant to 12 NYCRR § 142-2.2, Defendant was required to pay Plaintiff and other members of the putative class overtime compensation at a rate of time-and-one-half their regular rate of pay for all hours worked past forty (40) in each week.

33. Throughout the Class Period, Defendant willfully, regularly, and repeatedly failed to pay Plaintiff and the Class at the required overtime rates, one and a half times the employee's regular rate, for hours worked in excess of forty (40) hours per workweek.

34. As a result of Defendant's willful violations of the NYLL, Plaintiff and the Class members are entitled to recover their respective unpaid compensation, attorneys' fees and costs, interest, and such other legal and equitable relief as this Court deems just and proper.

**WHEREFORE**, Plaintiff, on behalf of himself and the Class, requests judgment as follows:

- (1) in an amount to be determined at trial, plus interest, attorneys' fees, and costs; and
- (2) any other equitable and further relief the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all causes of actions and claims with respect to which he has a right to a jury trial.

Dated: Carle Place, New York  
April 26, 2013

By: \_\_\_\_\_



Daniel Markowitz, Esq.  
Jeffrey K. Brown, Esq.  
LEEDS BROWN LAW, P.C.  
1 Old Country Road, Suite 347  
Carle Place, New York 11514  
Tel: (516) 873-9550

-and-

Lloyd Ambinder, Esq.  
VIRGINIA & AMBINDER, LLP  
111 Broadway, Suite 1403  
New York, New York 10006  
Tel: (212) 943-9080

*Attorneys for Plaintiff and Putative Class*



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SUMMONS AND COMPLAINT

**Leeds Brown Law, P.C.**

Attorneys for

Plaintiff

One Old Country Road  
Carle Place, NY 11514

(516) 873-9550

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: .....

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

.....  
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

20

NOTICE OF  
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. one of the judges of the within named Court,  
at  
on 20, at M.

Dated:

**Leeds Brown Law, P.C.**

Attorneys for

To:

One Old Country Road  
Carle Place, NY 11514