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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NICHOLAS CASCI, individually and on behalf of
all other persons similarly situated,

Plaintiffs,

- against -

NATIONAL FINANCIAL NETWORK, LLC and/or
any other entities affiliated with or controlled by
NATIONAL FINANCIAL NETWORK, LLC,

Defendants.

Case No.

BROWN, M. J.

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 the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206 and 216(b), New York Labor Law ("NYLL") § 190 *et seq.*, NYLL § 650 *et seq.*; 12 New York Codes, Rules, and Regulations ("NYCRR") § 142-2.1, to recover unpaid wages owed to Plaintiff and all similarly situated persons who are presently or were formerly employed by National Financial Network, LLC, and/or any other entities affiliated with or controlled by National Financial Network, LLC, (collectively "NFN" 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

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continuing through the present, Defendant has engaged in a policy and practice of failing to pay minimum wage and overtime compensation to Plaintiffs.

5. Under the direction of Defendant's owners, shareholders, corporate officers, and/or directors, Defendants instituted this practice of depriving the Plaintiffs of the basic compensation for work performed as mandated by federal and 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, damages, attorneys' fees, and costs.

JURISDICTION AND VENUE

7. 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 the NYLL, as they are so related in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

8. Upon information and belief, at least one Defendant resides in New York.

9. Upon information and belief, at least one Defendant is subject to personal jurisdiction in New York.

THE PARTIES

Plaintiff

Nicholas Casci

10. Plaintiff Nicholas Casci ("Casci") is an adult individual who is a resident of New Jersey.

11. Casci was employed by Defendant as a Field Representative in New York from approximately December 2009 to May 2010.

12. Casci is a covered employee within the meaning of the FLSA and NYLL.

Defendant

National Financial Network

13. Defendant National Financial Network, LLC is a domestic company organized and existing under the laws of the State of New York, at three locations: 1428 36th Street, Brooklyn, NY 11218, 990 Stewart Avenue, Garden City, NY 11530, and 7 Hanover Square, New York, NY 10004 and is engaged in the business of selling and marketing financial products, services, and investment vehicles.

14. Upon information and belief, Defendant has an annual gross volume of sales in excess of \$500,000.

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

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

FLSA COLLECTIVE ACTION ALLEGATIONS

17. Plaintiff brings the First and Second Claims for Relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all Plaintiffs employed by Defendant at National Financial Network, LLC between 2010 and the date of final judgment in this matter and who elect to opt-in to this action ("FLSA Collective Plaintiffs").

18. At all relevant times, Plaintiff and the other FLSA Collective Plaintiffs have been similarly situated and have been subject to Defendant's decision, policy, plan, and common

policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay them at the legally required minimum wage for all hours worked and one and one half times this rate for work in excess of forty (40) hours per workweek. The claims of Plaintiff stated herein are essentially the same as those of the other FLSA Collective Plaintiffs.

19. The First and Second Claims for Relief are properly brought under and maintained as an opt-in collective action pursuant to §16(b) of the FLSA, 29 U.S.C. 216(b). The FLSA Collective Plaintiffs are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendant's records. Notice can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Defendant.

RULE 23 CLASS ALLEGATIONS – NEW YORK

20. Plaintiffs bring the Third and Fourth Claims for Relief pursuant to the Federal Rules of Civil Procedure ("F.R.C.P.") Rule 23, on behalf of all Plaintiffs employed by Defendant at National Financial Network, LLC between approximately 2007 and the date of final judgment in this matter (the "Class Period").

21. All said persons, including Plaintiff, 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 Defendants. The hours assigned and worked, the positions held, and the rates of pay for each Class member are also determinable from Defendants' records. For purposes of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under said F.R.C.P. 23.

22. 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 fifty (50) members of the Class.

23. 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, spread of hours, overtime compensation, and all gratuities. Defendant's corporate-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.

24. Plaintiff is able to fairly and adequately protect the interests of the Class and has no interest 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.

25. 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.

26. 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

27. Defendant committed the acts alleged in this complaint knowingly, intentionally, and willfully.

28. Defendant knew that misclassifying Plaintiff and the FLSA Collective Plaintiffs resulting in nonpayment of minimum wage and nonpayment of overtime would economically injure Plaintiff and the FLSA Collective Plaintiffs and violated federal and state laws.

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

30. While working for Defendant, Plaintiff Casci, and, upon information and belief, the other FLSA Collective Plaintiffs and the Class, were not paid any hourly rate for the hours they worked.

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

32. Defendants committed the foregoing acts against the Plaintiffs, the FLSA Collective Plaintiffs, and the Class.

FIRST CLAIM FOR RELIEF:
FLSA Minimum Wage Claim, 29 U.S.C. §§ 201, *et seq.*,
Brought by Plaintiff on Behalf of
Himself and the FLSA Collective Plaintiffs

33. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

34. At all relevant times, Defendant has been, and continues to be, an “employer” engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, Defendant has employed “employee[s],” including Plaintiff and the FLSA Collective Plaintiffs.

35. Defendant was required to pay directly to Plaintiff and the FLSA Collective Plaintiffs the applicable Federal minimum wage rate for all hours worked.

36. Defendant misclassified Plaintiff and the FLSA Collective Plaintiffs as exempt from minimum wage compensation.

37. Throughout the statute of limitations period covered by these claims, Defendants knowingly and willfully failed to pay Plaintiff and the FLSA Collective Plaintiffs the applicable minimum wage for each hour worked.

38. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, seeks damages in the amount of their respective unpaid compensation, liquidated damages as provided by the FLSA for minimum wage violations, attorneys’ fees and costs, interest, and such other legal and equitable relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF:
FLSA Overtime Violations, 29 U.S.C. §§ 201 *et seq.*
Brought by Plaintiff on Behalf of Himself
and the FLSA Collective Plaintiffs

39. Plaintiff, on behalf of himself and other FLSA Collective Plaintiffs, realleges and incorporates by reference all previous paragraphs.

40. Throughout the statute of limitations period covered by these claims, Plaintiff and FLSA Collective Plaintiffs occasionally worked in excess of forty (40) hours per workweek.

41. At all relevant times, Defendant has operated under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines, and rules of willfully failing and refusing to pay Plaintiff and the FLSA Collective Plaintiffs at one and one half times the regular rate at which they are employed for all hours in excess of forty (40) hours per workweek and willfully failing to keep records required by the FLSA even though the FLSA Collective Plaintiffs have been and are entitled to overtime.

42. At all relevant times, Defendant willfully, regularly, and repeatedly failed to pay Plaintiff and the FLSA Collective Plaintiffs at the required overtimes rates, one and one half times the regular rate at which they are employed, for hours worked in excess of forty (40) hours per workweek.

43. Plaintiff, on behalf of himself and the FLSA Collective Plaintiffs, seeks damages in the amount of their respective unpaid overtime compensation, liquidated damages as provided by the FLSA for overtime violations, attorneys' fees and costs, interest, and such other legal and equitable relief as this Court deems just and proper.

THIRD 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**

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

45. Defendant knowingly paid the Plaintiff and members of the Class less than the New York State Minimum Wage Act § 652 and supporting regulations of the New York State Department of Labor.

46. Defendant did not pay Plaintiff minimum wage for all hours worked so that there was work time that was not compensated at all.

47. Defendant's failure to pay Plaintiff and the Class the minimum wage was willful within the meaning of NYLL § 663.

48. As a result of Defendant's willful violations of the NYLL, Plaintiffs and the Class members are entitled to recover their respective unpaid compensation, liquidated damages as provided for by NYLL Article 6, § 198, attorneys' fees and costs, interest, and such other legal and equitable relief as this Court deems just and proper.

FOURTH 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**

49. Plaintiffs, on behalf of themselves and members of the Class, reallege and incorporate by reference all previous paragraphs.

50. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

51. 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.

52. As a result of Defendant's willful violations of the NYLL, Plaintiff and the Class members are entitled to recover their respective unpaid compensation, liquidated damages as provided for by the NYLL, Article 6, § 198, 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 FLSA Collective Plaintiffs and members of the Class, requests judgment as follows:

- A. Designation of this action as a collective action on behalf of the FLSA Collective Plaintiffs (asserting FLSA claims and state claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims and state claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- B. Designation of Plaintiff as Representative of the FLSA Collective Plaintiffs;
- C. Designation of this action as a class action pursuant to F.R.C.P. 23;
- D. Designation of Plaintiff as Representative of the Class;
- E. An award of damages, according to proof, including liquidated damages, to be paid by Defendant;
- F. Penalties available under applicable laws;
- G. Costs of the action incurred herein;
- H. Attorneys' fees pursuant to 29 U.S.C. § 216, NYLL § 663, and other applicable statutes;
- I. Interest, as provided by law; and

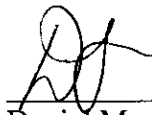
J. Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

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
March 27, 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 Named Plaintiffs, proposed FLSA Collective Plaintiffs, and proposed Class