

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

ROBIN R. STOOT, LISA A. PHILLIPS, and VANESSA HILL, on behalf of themselves and all others similarly situated,	:	Case No.: 1:24-cv-00592-LJV
	:	
Plaintiff,	:	
	:	
v.	:	Judge Lawrence J. Vilaro
	:	
CAPITAL MANAGEMENT SERVICES GROUP, INC.	:	<b>JURY DEMANDED</b>
	:	
Defendant.	:	

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**FIRST AMENDED COMPLAINT 29 U.S.C. § 216(b) AND FRCP 23 CLASS ACTION  
COMPLAINT**

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Plaintiffs Robin R. Stoot, Lisa A. Phillips, and Vanessa Hill (“Named Plaintiffs”), for their Complaint against Defendant Capital Management Services Group, Inc. (“Defendant”), bring this action individually and on behalf of all non-exempt employees employed by Capital Management Services Group, Inc. who worked at least 38 hours in any one workweek. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips bring this action to recover compensation, liquidated damages, attorneys’ fees and costs, and other equitable relief pursuant to the Fair Labor Standards Act of 1938 (“FLSA”), as amended 29 U.S.C. § 201 et seq. on behalf of all similarly situated employees and bring the Ohio Minimum Fair Wage Standards Act, O.R.C. §§ 4111 et. seq., (the “Ohio Wage Act”), the Ohio Prompt Pay Act (“OPPA”), O.R.C. § 4113.15 (the Ohio Wage Act and the OPPA will be collectively referred to as the “Ohio Acts”) and O.R.C. § 2307.60 claims as to recover compensation, liquidated damages, compensatory damages, punitive damages, attorneys’ fees and

costs, and other equitable relief on behalf of themselves and all Ohio employees pursuant to Federal Rule of Civil Procedure (“FRCP”) 23. Named Plaintiff Hill brings this action to recover unpaid compensation, liquidated damages, and attorneys’ fees and costs pursuant to the New York Payment of Wages Act, N.Y. LAB. LAW § 162, 190–199 (“NYPWA”); and the New York Minimum Wage Act, N.Y. LAB. LAW § 651–665 (“NYMWA”) (the NYPWA and NYMWA are collectively referred to as the “New York Acts”) on behalf of herself and all New York employees pursuant to FRCP 23.

## **I. PARTIES AND JURISDICTION**

1. Named Plaintiff Robin R. Stoot (“Plaintiff Stoot”) is an adult individual residing in Youngstown, Ohio at 218 Matta Ava, Youngstown, Ohio 44509. Plaintiff Stoot is employed by Defendant in a fully remote position. (ECF No. 3)

2. Named Plaintiff Lisa A. Phillips (“Plaintiff Phillips”) is an adult individual residing in Parma, Ohio at 2418 Stanfield Drive, Parma, Ohio 44134. Plaintiff Phillips is employed by Defendant in a fully remote position. (ECF No. 3-1)

3. Named Plaintiff Vanessa Hill (“Plaintiff Hill”) is an adult individual residing in North Tonawanda, New York at 132 Concord Drive, North Tonawanda, New York, 14215. Plaintiff Hill was employed by Defendant as a Customer Service Representative from approximately December 2020 to April 2021.

4. The Putative Collective members are all non-exempt employees employed by Capital Management Services Group, Inc. at any time within the period of three (3) years preceding the filing of Plaintiffs’ Motion for Court Supervised Notice through the date of judgment who worked at least 38 hours in any one workweek.

5. The Putative Ohio Class members are all non-exempt employees employed by Capital Management Services Group, Inc. at any time within the period of six (6) years preceding

the filing of the original Complaint through the date of judgment who worked at least 38 hours in any one workweek.

6. The Putative New York Class members are all non-exempt employees employed by Capital Management Services Group, Inc. at any time within the period of two (2) years preceding the filing of the original Complaint through the date of judgment who worked at least 38 hours in any one workweek.

7. The Putative Collective, the New York Rule 23 Class, and the Ohio Rule 23 Class are collectively referred to as Employees Entitled to Notice.

8. Defendant Capital Management Services Group, Inc. (“Defendant”) is a foreign corporation headquartered at 698 ½ S. Ogden Street, Buffalo, New York 14206, and is registered to do business in the state of Ohio. Process may be served upon its Registered Agent, Corporation Service Company, 1160 Dublin Road, Suite 400, Columbus, Ohio 43215.

9. This Court has federal question jurisdiction over this Complaint pursuant to 28 U.S.C. § 1331 because it asserts claims under the Fair Labor Standards Act (“FLSA”).

10. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367 because the claims share a common nucleus of operative fact and arises out of the same occurrence as the federal claims.

11. Venue in the Western District of New York is proper pursuant to 28 U.S.C. § 1391 as Defendant is headquartered there.

## **II. FACTUAL ALLEGATIONS**

### **Unpaid Clock in Duties**

9. During all times material to this Complaint, based on Defendant’s companywide policy, Named Plaintiffs and the Employees Entitled to Notice were required to perform work “off-the-clock” and without pay.

10. Specifically, Named Plaintiffs and the Employees Entitled to Notice were required to start up and log into three separate software programs before being able to clock-in for the start of their shifts. (“Clock-in Duties”) Oftentimes, these Clock-in Duties can take anywhere from twenty (20) to thirty (30) minutes to complete.

11. Further, the software programs are set up in a way that forces Named Plaintiffs and the Employees Entitled to Notice to load and sign into three different programs before they are able to get into their timeclock software, ADP. This makes it impossible for Named Plaintiffs and the Employees Entitled to Notice to clock-in prior to completing their Clock-in Duties.

12. In addition to the physical inability to clock in before completing Clock-in Duties, Defendant further has a company-wide policy in place that prohibits Named Plaintiffs from clocking-in more than five (5) minutes before the start time of a scheduled shift.

13. Indeed, Defendant required (and continues to require) Named Plaintiffs and the Employees Entitled to Notice to be ready to accept their first customer call the moment the employee’s official shift starts.

14. In order to be ready to accept calls at the moment the official shift starts, the Clock-in Duties must be complete to allow employees to see client information for phone calls, receive guidance on technical issues, and chat with supervisors throughout the day.

15. If Named Plaintiffs and the Employees Entitled to Notice have not completed their Clock-in Duties prior to their clock in time, they will not be prepared to take phone calls by their shift start time, and they can be (and often are) subject to discipline.

16. Defendant’s requirements further extend to Named Plaintiffs and the Employees Entitled to Notice as they return to clock-in after lunch or breaks throughout the shift. Named Plaintiffs and the Employees Entitled to Notice are oftentimes required to end their lunch and breaks early in order to complete their Clock-in Duties before getting back to work.

17. As a result of Defendant's company-wide policy and practice of requiring Named Plaintiffs and the Employees Entitled to Notice to perform their Clock-in Duties off-the-clock before the beginning of their shifts, Named Plaintiffs and the Employees Entitled to Notice were not compensated for all hours worked, including all worked in excess of forty (40) in a workweek at the rates required by the FLSA.

**Unpaid Rest Periods Under 29 CFR § 785.18**

18. During all times material to this Complaint, based on Defendant's companywide policy, Named Plaintiffs and the Employees Entitled to Notice had a limit of only ten (10) minutes *per shift* that they were able to step away from their desks for breaks. ("Ten-Minute Policy").

19. Defendant uses a program called Genesis that allows Named Plaintiffs and the Employees Entitled to Notice to switch their status on their computers to alert their supervisors of their activity. Example statuses include "break," "lunch," or "in a meeting." Switching your status to "break" while being away from your computer for any reason, including bathroom breaks, is a requirement of Defendant.

20. Defendant keeps track of how long each of the Named Plaintiffs and the Employees Entitled to Notice have their status switched to "break." Per Defendant's Ten-Minute Policy, Named Plaintiffs and the Employees Entitled to Notice do not get paid for any break time in excess of ten (10) minutes as a cumulative *total* during each shift.

21. Defendant's Ten-Minute Policy is a violation of 29 C.F.R. § 785.18, which allows for rest periods of short duration so long as they do not exceed twenty (20) minutes.

**Unpaid Technical Issues**

22. Named Plaintiffs and the Employees Entitled to Notice often experienced technical difficulties amongst the several software programs required to perform their essential job duties.

Per Defendant's companywide policy, Named Plaintiffs and the Employees Entitled to Notice were not paid for the time they spent waiting on technical issues to resolve.

23. When a program is experiencing technical issues, Defendant requires Named Plaintiffs and the Employees Entitled to Notice to reach out to their supervisor first, before contacting the Information Technology Department ("I.T."). Supervisors are required to be the ones who contact I.T. for any technical support needed.

24. However, after contacting a supervisor to get technical support, Named Plaintiffs and the Employees Entitled to Notice often do not hear back from their supervisors right away.

25. Indeed, on one occasion, Named Plaintiff Stoot waited for thirty (30) minutes to hear back from her supervisor and get technical support on a program that had crashed.

26. Further, when I.T. is contacted and attempts to resolve the issue, the time it takes to fix each program can be lengthy. On one occasion, it took I.T. nearly three (3) hours to fix a program for Named Plaintiff Stoot.

27. Upon information and belief, the time Named Plaintiffs and the Employees Entitled to Notice spent waiting for their Supervisors to contact I.T. and waiting for I.T. to actually resolve the issues went uncompensated.

28. During all times material to this Complaint, Named Plaintiffs and the Employees Entitled to Notice were entitled to be paid for all hours worked in excess of forty (40) in a workweek at 150% the appropriate regular rate.

29. By not paying Named Plaintiffs and the Employees Entitled to Notice at a rate of 150% of their regular rate for all hours worked over forty (40) in a workweek, Defendant willfully violated the FLSA, Ohio Wage Act, and the New York Acts.

#### **Unpaid Meal Breaks**

30. Defendant has a policy wherein it automatically deducts one 30-minute meal period

from Named Plaintiffs' and the Employees Entitled to Notice daily time.

31. Defendant's Meal Break policy is a per se violation of the FLSA and state wage law in that it requires the Named Plaintiffs and the Employees Entitled to Notice to work during their meal break time while having that time automatically deducted from their daily time.

32. Defendant's automatic thirty (30) minute meal period deduction resulted (and continues to result) in Named Plaintiffs and the Employees Entitled to Notice working straight time hours and overtime hours for which they were (and are) not compensated at the rates required by the FLSA and applicable state law.

33. Defendant was (and continues to be) aware that Named Plaintiffs and the Employees Entitled to Notice regularly worked (and continue to work) through their meal periods without pay in violation of the FLSA and relevant state law.

34. Defendant knew Named Plaintiffs and the Employees Entitled to Notice did not take breaks because Named Plaintiffs and the Employees Entitled to Notice informed their supervisors that they regularly did not take a meal break.

35. As a result of Defendant's failure to compensate Named Plaintiffs and the Employees Entitled to Notice for compensable work performed "off the clock," such as during their unpaid meal break, Named Plaintiff and the Employees Entitled to Notice worked straight time hours and overtime hours for which they were not compensated at the rates required by the FLSA and applicable state law.

### **III. COURT SUPERVISED NOTICE PURSUANT TO 29 USC § 216(b)**

#### **ALLEGING FLSA VIOLATIONS**

36. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

37. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips request that the Court issue

Court Supervised Notice to the Putative Collective, which is defined as:

**All non-exempt employees employed by Capital Management Services Group, Inc. at any time within the period of three (3) years preceding the filing of Plaintiffs' Motion for Court Supervised Notice through the date of judgment who worked at least 38 hours in any one workweek.**

38. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips reserve the right to amend and refine the definition of the Putative Collective they seek to have the Court serve notice based upon further investigation and discovery.

39. The precise size and identity of the proposed Putative Collective should be ascertainable from the business records, tax records, and/or employee and personnel records of Defendant.

40. Court Supervised Notice pursuant to 29 U.S.C. § 216(b) to the Putative Collective is appropriate because there exists at least a strong likelihood that they are similarly situated to the Named Plaintiffs Robin R. Stoot and Lisa A. Phillips.

41. Sending Court Supervised Notice pursuant to 29 U.S.C. § 216(b) to the Putative Collective is appropriate because they have been subjected to single companywide policies and common business practices referenced in the paragraphs above, and the success of their claims depends upon the resolution of common issues of law and fact, including *inter alia*, whether Defendant satisfied the FLSA's requirements for paying them for all hours worked.

42. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Putative Collective, having willfully been not paid their entitled overtime compensation for work they performed pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

43. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Putative Collective have been similarly affected by the violations of Defendant in workweeks during the relevant time



period, which amount to a single decision, policy, or plan to willfully avoid paying all earned FLSA compliant wages.

44. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips seek to have the Court send supervised notice pursuant to 29 U.S.C. § 216(b), as defined above, to the proposed group of similarly situated current and former employees, i.e., the Putative Collective.

45. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips are similarly situated to the Putative Collective and will prosecute this action vigorously on their behalf.

46. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips intend to send notice to all the Putative Collective pursuant to Section 216(b) of the FLSA. The names and addresses of the Putative Collective are available from Defendant's records. For the purpose of notice and other purposes related to this action, their names, addresses, email addresses, and phone numbers are readily available from Defendant. Notice can be provided by means permissible under the FLSA.

47. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Putative Collective have been damaged by Defendant's willful refusal to pay entitled overtime compensation for all hours worked.

48. As a result of Defendant's FLSA violations, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Putative Collective are entitled to damages, including, but not limited to, unpaid wages, liquidated damages, costs, and attorneys' fees.

**FED. CIV. RULE 23 OHIO CLASS ACTION ALLEGATIONS**

**(Class Action Alleging Violations of the Ohio Wage Acts and OPPA)**

49. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips bring their Ohio Wage Acts and OPPA claims pursuant to Fed. R. Civ. P. 23, on behalf of themselves and a class of persons consisting of:

**All non-exempt Ohio employees employed by Capital Management Services Group, Inc. at any time within the period of two (2) years preceding the filing of this Complaint through the date of judgment who worked at least 38 hours in any one workweek. (“Ohio Rule 23 Class” or “Ohio Rule 23 Class Members”)**

50. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips reserve the right to amend and refine the definition of the Ohio Rule 23 Class they seek to represent based upon further investigation and discovery.

51. The number and identity of the Ohio Rule 23 Class Members is ascertainable from Defendant's records. For the purpose of notice and other purposes related to this action, their names, addresses, email addresses, and phone numbers are readily available from Defendant. Notice can be provided by means permissible under the Federal Rule of Civil Procedure 23.

52. The Ohio Rule 23 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.

53. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips bring claims typical of those claims which could be alleged by any Ohio Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each Ohio Rule 23 Class Member in separate actions.

54. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members were subject to the same corporate practices of Defendant, as alleged herein, of failing to pay employees for all hours worked.

55. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members have all sustained similar types of damages as a result of Defendant's failure to comply with the Ohio Wage Act and the OPPA.

56. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members have all been injured in that they have been uncompensated due to Defendant's common policy, practice, and willful conduct. Defendant's corporate wide policies, practices and willful

conduct affected the Ohio Rule 23 Class similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each of the Ohio Rule 23 Class Members.

57. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful practices, policies, and willful conduct.

58. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips are able to protect the interests of the Ohio Rule 23 Class Members fairly and adequately and have no interests antagonistic to the Rule 23 Class.

59. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members are represented by attorneys who are experienced and competent in both class litigation and employment litigation.

60. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly within the context of wage and hour litigation on behalf of non-exempt workers where individual class members lack the financial resources to vigorously prosecute a lawsuit against a corporate defendant.

61. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

62. Common questions of law and fact exist as to Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class that predominate over any questions only affecting Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members individually and include, but are not limited to:

- a. Whether Defendant failed to pay Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members for all hours worked, including off-the-clock work.

- b. Whether the wages owed to Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members remain unpaid for more than thirty (30) days.
- c. Whether Defendant's companywide decision to not pay Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members for all hours worked was willful and without a good faith basis.
- d. The nature and extent of class-wide injury and the measure of damages for those injuries.

63. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members have been damaged by Defendant's willful refusal to pay them for all hours worked, and to make that payment within thirty (30) days of the works' performance.

64. As a result of Defendant's Ohio Wage Act and OPPA violations, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class Members are entitled to damages, including, but not limited to, unpaid wages, treble damages, liquidated damages, costs, and attorneys' fees.

**FED. CIV. RULE 23 NEW YORK CLASS ACTION ALLEGATIONS**

**(Class Action Alleging Violations of the New York Acts)**

65. Named Plaintiff Vanessa Hill brings her New York Acts claims pursuant to Fed.R. Civ. P. 23, on behalf of herself and a class of persons consisting of:

**All non-exempt New York employees employed by Capital Management Services Group, Inc. at any time within the period of six (6) years preceding the filing of this Complaint through the date of judgment, who worked at least 38 hours in any one workweek. ("New York Rule 23 Class" or "New York Rule 23 Class Members")**

66. Named Plaintiff Vanessa Hill reserves the right to amend and refine the definition of the New York Rule 23 Class she seeks to represent based upon further investigation and discovery.

67. The number and identity of the New York Rule 23 Class Members is ascertainable from Defendant's records. For the purpose of notice and other purposes related to this action, their names, addresses, email addresses, and phone numbers are readily available from Defendant. Notice can be provided by means permissible under the Federal Rule of Civil Procedure 23.

68. The New York Rule 23 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.

69. Named Plaintiff Vanessa Hill brings claims typical of those claims which could be alleged by any New York Rule 23 Class Member, and the relief sought is typical of the relief which would be sought by each New York Rule 23 Class Member in separate actions.

70. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members were subject to the same corporate practices of Defendant, as alleged herein, of failing to pay employees for all hours worked.

71. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members have all sustained similar types of damages as a result of Defendant's failure to comply with the New York Acts.

72. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members have all been injured in that they have been uncompensated due to Defendant's common policy, practice, and willful conduct. Defendant's corporate wide policies, practices and willful conduct affected the Rule 23 Class similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class Members.

73. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members sustained similar losses, injuries, and damages arising from the same unlawful practices, policies, and willful conduct.

74. Named Plaintiff Vanessa Hill is able to protect the interests of the New York Rule

23 Class Members fairly and adequately and have no interests antagonistic to the Rule 23 Class.

75. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members are represented by attorneys who are experienced and competent in both class litigation and employment litigation.

76. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly within the context of wage and hour litigation on behalf of non-exempt workers where individual class members lack the financial resources to vigorously prosecute a lawsuit against a corporate defendant.

77. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

78. Common questions of law and fact exist as to Named Plaintiff Vanessa Hill and the New York Rule 23 Class that predominate over any questions only affecting Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members individually and include, but are not limited to:

- a. Whether Defendant failed to pay Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members for all hours worked, including off-the-clock work.
- b. Whether Defendant's companywide decision to not pay Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members for all hours worked was willful and without a good faith basis.
- c. The nature and extent of class-wide injury and the measure of damages for those injuries.

79. Named Plaintiff Vanessa Hill and the New York Rule 23 Class Members have been damaged by Defendant's willful refusal to pay them for all hours worked.

80. As a result of Defendant's New York Acts violations, Named Plaintiff Vanessa Hill

and the New York Rule 23 Class Members are entitled to damages, including, but not limited to, unpaid wages, liquidated damages, costs, and attorneys' fees.

#### **IV. CAUSES OF ACTION**

##### **COUNT I** **VIOLATION OF THE OVERTIME REQUIREMENTS OF THE FLSA**

81. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips re-allege and incorporate by reference, the allegations set forth in the preceding paragraphs.

82. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips assert this claim on behalf of themselves and Putative Collective by filing a consent form pursuant to 29 U.S.C. § 216(b).

83. At all times material to this Complaint, Defendant was subject to the FLSA and employed Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Putative Collective pursuant to the FLSA.

84. At all times material to this Complaint, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Putative Collective were non-exempt employees entitled to FLSA coverage.

85. At all times material to this Complaint, Defendant regularly employed Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Putative Collective, to work more than forty (40) hours in a workweek.

86. At all times material to this Complaint, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Putative Collective were entitled to receive time and a half for their hours worked in excess of forty (40) in a workweek.

87. At all times material to this Complaint, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Putative Collective were not paid for all hours worked and overtime compensation at the rates required by the FLSA, resulting from generally

applicable policies and practices of Defendant.

88. Defendant willfully subjected Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Putative Collective, to a companywide policy that required employees to perform off-the-clock work without pay, a failure to perform as required by the FLSA.

89. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Putative Collective are entitled to recover all unpaid overtime wages, an equal amount in liquidated damages, and attorney's fees and expenses pursuant to 29 U.S.C. § 216(b).

90. In violating the FLSA, Defendant, lacking a good faith basis, acted willfully and with reckless disregard for clearly applicable FLSA provisions.

**COUNT II**  
**VIOLATION OF THE OVERTIME REQUIREMENTS OF THE OHIO WAGE ACT**

91. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

92. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips assert this Ohio Wage Act claim on behalf of themselves and the Ohio Rule 23 Class.

93. At all times material to this Complaint, Defendant was subject to the Ohio Wage Act and employed Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Ohio Rule 23 Class pursuant to the Ohio Wage Act.

94. At all times material to this Complaint, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Ohio Rule 23 Class were non-exempt employees entitled to Ohio Wage Act coverage.

95. At all times material to this Complaint, Defendant regularly employed Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Ohio Rule 23



Class, to work more than forty (40) hours in a workweek.

96. At all times material to this Complaint, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and upon information and belief, the Ohio Rule 23 Class were entitled to receive time and a half their regular rate for hours worked in excess of forty (40) in a workweek.

97. Defendant willfully subjected Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Ohio Rule 23 Class, to a companywide policy that required employees to perform off-the-clock work without pay, as required by the Ohio Wage Act.

98. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips, and, upon information and belief, the Ohio Rule 23 Class, are entitled to recover all unpaid overtime wages, and other compensation, liquidated damages, interest, and attorney's fees and expenses, and all other remedies available as compensation for Defendant's violations of the Ohio Wage Act.

99. In violating the Ohio Wage Act, Defendant, lacking a good faith basis, acted willfully and with reckless disregard for clearly applicable Ohio Wage Act provisions.

**COUNT III**  
**VIOLATION OF THE OHIO PROMPT PAY ACT**

100. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

101. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips assert this claim on behalf of themselves and the Ohio Rule 23 Class.

102. At all times relevant to this Complaint, Defendant employed Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class within the meaning of the OPPA and was subject to its compliance.

103. The OPPA provides that employers shall pay covered employees all wages, on or before the first day of each month for wages earned during the first half of the preceding month

ending with the fifteenth day thereof, and, on or before the fifteenth day of each month, for wages earned during the preceding calendar month.

104. At all times material to this Complaint, Defendant has refused to pay Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Ohio Rule 23 Class, all owed overtime wages at one- and-a-half times their normal hourly rate, within thirty (30) days of performing the work.

105. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and, upon information and belief, the Ohio Rule 23 Class's wages remain unpaid for more than thirty (30) days beyond their regularly scheduled payday.

106. Defendant's violations of the OPPA have been a willful, intentional, and a bad faith disregard of the OPPA's provisions.

**COUNT IV**  
**CIVIL PENALITIES FOR CRIMINAL ACTS**  
**O.R.C. § 2307.60**

107. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips re-allege, and incorporate by reference, the allegations set forth in the preceding paragraphs.

108. Named Plaintiffs Robin R. Stoot and Lisa A. Phillips assert this claim on behalf of themselves and the Ohio Rule 23 Class from the state of Ohio.

109. The Fair Labor Standards Act, 29 U.S.C. § 216(a), imposes criminal penalties for willful violations of the FLSA.

110. By its acts and omissions described herein, Defendant has willfully violated the FLSA and Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class from the state of Ohio were injured as a result.

111. O.R.C. § 2307.60 permits anyone injured in person or property by a criminal act to recover damages in a civil action, including exemplary and punitive damages.

112 As a result of Defendant's willful violations of the FLSA, Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Rule 23 Class from the state of Ohio are entitled to compensatory and punitive damages pursuant to O.R.C. § 2307.60.

**COUNT V**

**VIOLATION OF THE NEW YORK ACTS**

113. Named Plaintiff Vanessa Hill asserts this claim on behalf of herself and the New York Rule 23 Class.

114. At all material times, Defendant has been an "employer" as defined by the New York Acts. See NY LAB. LAW §§ 190(3) and 651(6).

115. At all material times, Named Plaintiff Vanessa Hill and the New York Class Members were Defendant's "employees" as defined within the New York Acts. See NY LAB. LAW §§ 190(2) and 651(5).

116. Defendant is not exempt from paying wages and overtime benefits under the New York Acts.

117. During the course of their employment, Defendant agreed to pay Named Plaintiff Vanessa Hill and each New York Class Member an hourly rate of pay.

118. Named Plaintiff Vanessa Hill and each New York Class Member accepted Defendant's offer.

119. Named Plaintiff Vanessa Hill and the New York Class Members' agreed hourly pay rates are therefore "wages" within the meaning of the New York Acts. See NY LAB. LAW § 191(1)(d).

120. The New York Acts also require employers, like Defendant, to pay employees, including Named Plaintiff Vanessa Hill and the New York Class Members, overtime wages at a rate not less than 1.5 times their regular rates of pay for all hours worked in excess of forty (40) in

a workweek. See NY LAB. LAW § 191(1)(d).

121. Defendant violated, and continues to violate, the New York Acts by failing to pay Named Plaintiff Vanessa Hill and the New York Class Members all straight time hours worked at the agreed hourly rate and all overtime wages at rates not less than 1.5 times their regular rates for all hours worked after forty (40) in a workweek, including all off-the-clock hours worked by Named Plaintiff Vanessa Hill and the New York Class Members. See N.Y. COMP. CODES R. & REGS. TIT. 12, § 142-2.2.

122. The New York Acts also require employers to allow at least thirty (30) minutes for the noon day meal, when works a shift of more than six (6) hours which extends over noon. See NY LAB. LAW § 162-2.

123. Defendant violated, and continues to violate, the New York Acts by failing to provide at least a thirty (30) minute noon day meal break when Named Plaintiffs and the Employee Entitled to Notice worked more than six (6) hours in a shift which extended over noon.

124. The New York Acts also forbid the employer from unlawfully deducting wages from their employees. See NY LAB. LAW § 193

125. Defendant violated, and continues to violate, the New York Acts by unlawfully deducting wages from Named Plaintiffs and the New York Rule 23 Class. Specifically, Defendant's automatic thirty (30) minute meal period deduction resulted (and continues to result) in Named Plaintiffs and the New York Rule 23 Class working straight time hours and overtime hours for which they were (and are) not compensated at the rates required by applicable New York law.

126. In violating the New York Acts, Defendant acted willfully, without a good faith basis, and with reckless disregard of clearly applicable New York law.

127. As a direct and proximate result of Defendant's willful conduct, Named Plaintiff

Vanessa Hill and the New York Class Members have suffered substantial losses, and continue to suffer substantial losses, and have been deprived of compensation to which they are entitled damages, including double damages for unpaid overtime, treble damages for unpaid straight time, and reasonable attorneys' fees pursuant to the New York Acts. See NY LAB. LAW § 198; 663(1).

128. Defendant is in possession and control of necessary documents and information from which Named Plaintiff Vanessa Hill would be able to precisely calculate damages.

129. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendant.

### **PRAYER FOR RELIEF**

WHEREFORE, Named Plaintiffs, on behalf of themselves, the Putative Collective, and the Ohio Rule 23 Class, and the New York Rule 23 Class, pray that this Court enter the following relief:

A. For an Order sending Court Supervised Notice to the Putative Collective as defined herein and requiring Defendant to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative collective action members.

B. For an Order certifying the Ohio Acts Rule 23 Class, under Fed. R. Civ. P. 23, as defined herein and requiring Defendant to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative class action members.

C. For an Order certifying the New York Acts Rule 23 Class, under Fed. R. Civ. P. 23, as defined herein and requiring Defendant to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative class action members.

D. In the event the Defendant seeks to have discovery on the issues of whether the Putative Collective are similarly situated to the Named Plaintiffs, that the Court issue an order tolling the FLSA statute of limitations for the Putative Collective as of the filing of this Complaint

through the end of the notice discovery period.

E. Issuing proper notice to the Putative Collective at Defendant's expense.

F. Unpaid overtime wages and an equal amount as liquidated damages pursuant to the FLSA and the supporting regulations for the Named Plaintiffs and the Putative Collective that join the lawsuit.

G. An Order certifying an Ohio Acts Rule 23 Minimum Wage Class pursuant to Federal Rule of Civil Procedure 23.

H. An Order certifying a New York Acts Rule 23 Minimum Wage Class pursuant to Federal Rule of Civil Procedure 23.

I. Designation of Named Plaintiffs Robin R. Stoot and Lisa A. Phillips as representatives of the Ohio Acts Rule 23 Class and counsel of record as Class Counsel.

J. Designation of Named Plaintiff Vanessa Hill as representative of the New York Acts Rule 23 Class and counsel of record as Class Counsel.

K. A declaratory judgment that the practice complained of herein is unlawful under the Ohio Wage Act and the OPPA.

L. A declaratory judgment that the practice complained of herein is unlawful under the New York Acts.

M. Awarding Named Plaintiffs Robin R. Stoot and Lisa A. Phillips and the Ohio Acts Rule 23 Class members the sum of 6% of the total unpaid wages or \$200.00 for each instance of failure to pay wages owed within thirty days, whichever is greater, pursuant to the OPPA.

N. A finding that the Defendant acted willfully and without a good faith basis for its violations of the FLSA, the Ohio Wage Act and the OPPA.

O. An Order pursuant to New York state law awarding Named Plaintiff Vanessa Hill and the New York Acts Rule 23 Class damages for unpaid wages and all other damages allowed

by law.

P. Compensatory and punitive damages under O.R.C. § 2307.60.

Q. Awarding pre-judgment and post-judgment interest.

R. An award of prejudgment and post-judgment interest.

S. An award of costs and expenses of this action, together with reasonable attorney' fees and expert fees; and,

T. Any other relief to which the Named Plaintiffs, the Putative Collective who join this lawsuit, the Ohio Acts Rule 23 Class members, and the New York Acts Rule 23 Class members may be entitled.

#### DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and Class Members demand a trial by jury on all questions of fact raised by the Complaint.

Dated: August 9, 2024

Respectfully submitted,

**FERR & MULLIN, P.C.**

/s/Robert L. Mullin

Robert L. Mullin (NY Bar No. 4549739)

40 Wildbriar Road

Rochester, NY 14623

Phone: (585) 869-0210

Email: rlmullin@ferrmullinlaw.com

**BARKAN MEIZLISH DEROSE COX, LLP**

/s/ Robert E. DeRose

Robert E. DeRose (OH Bar No. 0055214)

*Pro Hac Vice anticipated*

4200 Regent Street, Suite 210

Columbus, OH 43219

Phone: (614) 221-4221

Facsimile: (614) 744-2300

Email: [bderose@barkanmeizlish.com](mailto:bderose@barkanmeizlish.com)

/s/Hans A. Nilges

**NILGES DRAHER LLC**

7034 Braucher St., N.W.

Suite B

North Canton, OH 44720

Phone: (330) 470-4428

Facsimile: (330) 754-1430

Email: [hans@ohlaborlaw.com](mailto:hans@ohlaborlaw.com)

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on August 9, 2024, a copy of the foregoing document has been served on counsel for all parties through the Court's CM/ECF system, which will send notification of such filing to all counsel of record. Parties may access this filing through the court's filing system.

/s/ Robert E. DeRose

Robert E. DeRose