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

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| JHON RUGELES, Individually and on Behalf of All Those Similarly Situated,<br><br>Plaintiff,<br><br>v.<br><br>STATEWIDE CONSTRUCTION SERVICES OF NY, INC., STATEWIDE RESTORATION OF NEW YORK, INC., and WAYNE NOEL, Jointly and Severally,<br><br>Defendants. | Case No.<br>2:24-cv-06728 |

**SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**
**(Jury Trial Demanded)**

**Comes Now**, Plaintiff, by and through undersigned counsel, pursuant to Fed. R. Civ. P. 15(a)(1)(B), files this Second Amended Collective Action Complaint. Upon information and belief, Plaintiff alleges as follows:

## NATURE OF THE ACTION

1. Defendants own and operate two construction companies called Statewide Construction Services of NY, Inc. (hereinafter, "SCS"), and Statewide Restoration of New York, Inc (hereinafter, "SR"). SCS and SR perform residential and commercial construction services throughout New York, as well as in New Jersey, Connecticut, and Pennsylvania

2. Plaintiff was jointly employed by Defendants as a carpenter, which entailed tasks such as: framing windows, installing ceilings, laying sheetrock, and cleaning work sites.

3. Throughout Plaintiff's employment, Plaintiff received no overtime wages despite working excess of 40 hours each week.

4. Plaintiff brings this action on behalf of himself, and all other similarly situated employees of Defendants, that have not received overtime wages, spread of hours pay, and timely wage payments which are due to manual workers within seven days, pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq, the New York Labor Law (NYLL), §§ 190 et seq., N.Y. Comp. Codes R. & Regs. tit. 12, § 142–2.2, and supporting regulations.

5. Plaintiff seeks to bring these claims as a collective action pursuant to 29 U.S.C. § 216(b), and as a class action pursuant to Fed. R. Civ. P. 23.

## JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, 1343. In addition, the Court has jurisdiction over Plaintiff claims under the FLSA pursuant to 29 U.S.C. § 216(b).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as SCS resides at 33 Comac Loop, Ronkonkoma, New York 11779, which is in Suffolk County. Therefore, venue is proper in this district.

8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

## THE PARTIES

**Plaintiff:**

9. Jhon Rugeles, was at all relevant times, an adult individual residing at 147 Cone Avenue, Central Islip, New York, which is in Suffolk County.

**Defendants:**

10. SCS is an active New York corporation. Its principal place of business is: 33 Comac Loop, Ronkonkoma, New York 11779, which is in Suffolk County.

11. SR is an active New York corporation. Its principal place of business is: 1574 Lakelaknd Avenue, Suite 4, Bohemia, NY 11716, which is in Suffolk County.

12. Wayne Noel, upon information and belief is an owner, officer, director and/or managing agent of SCS. Mr. Noel's address is unknown at this time.

13. Mr. Noel participated in the day-to-day operations of SCS and SR, and acted intentionally and maliciously. Mr. Noel signed checks that were issued to Plaintiff during his employment, which were written in the name of both SCS and SR, depending on the project on which Plaintiff was working. Mr. Noel is considered an "employer" pursuant to the FLSA, 29 U.S.C. § 203(d), the regulations promulgated under 29 C.F.R. § 791.2, and the NYLL, and is jointly and severally liable with SCS and SR.

14. Plaintiff was jointly employed by Noel, SCS and SR throughout his employment.

15. Upon information and belief, Mr. Bowes jointly set the unlawful payroll policies complained of in this complaint for SCS and SR.

16. At all relevant times, Defendants listed in this complaint have been employers of Plaintiff, and/or joint employers within the meaning of the FLSA and the NYLL.

17. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of $500,000, within the meaning of 29 U.S.C. § 203(s)(1)(A)(ii).

18. Additionally, upon information and belief, at all relevant times, Defendants have had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce, in that they are a construction company that obtains materials from all over the United States for use in their construction projects, such as: lifts, vehicles, industrial painting equipment, and other industrial equipment manufactured outside of New York. Additionally, Plaintiff and his co-workers, were required as a condition of their employment with Defendants to travel to states outside of New York to perform construction services, such as New Jersey and Connecticut. Thus, Defendants have engaged in interstate commerce within the meaning of 29 U.S.C. § 203(s)(1)(A)(i).

## STATEMENT OF FACTS

19. At all relevant times, Defendants have been in the construction industry, performing construction services for residential and commercial projects in New York, New Jersey, Connecticut, and Pennsylvania.

20. Plaintiff was employed by Defendants as a carpenter from approximately 2014 to March 30, 2024.

21. As a carpenter, Plaintiff's job duties included: framing windows, installing ceilings, laying sheetrock, and cleaning work sites.

22. Plaintiff performed these carpenter duties for Defendants all of New York, but also in states

such as New Jersey and Connecticut.

23. Plaintiff was paid a rate of $46.50 per hour, straight-time, for all hours worked.

24. Plaintiff typically worked six days a week, Monday through Saturday, and was off on Sundays.

25. Plaintiff typically worked 11 hours each day, and generally worked from 7 a.m. to 7 p.m., with a half-hour lunch break each day. However, Plaintiff often did not get his half-hour lunch break, and sometimes worked with no break at all.

26. On average, Plaintiff worked 66 hours each week.

27. Throughout Plaintiff's employment, Plaintiff was paid straight-time for all hours worked and received no overtime wages whatsoever, despite working in excess of 40 hours each week.

28. For example, during the work week of January 15, 2024 to January 21, 2024, Plaintiff worked 66 hours. Plaintiff was paid $46.50 per hour, straight-time, for all hours worked that week, and earned a total of $3,069.00 for that week. During that week, Plaintiff worked, Monday through Saturday, from 7 a.m. to 7 p.m., but sometimes would end work at 6 p.m. Plaintiff was given a half-hour break each day. Plaintiff was off on Sunday.

29. Defendants were required by law to pay Plaintiff time-and-a-half his regular wages for all hours in excess of 40 hours, but purposely chose to not to pay him overtime wages.

30. Additionally, Defendants did not pay Plaintiff his full wages within seven days as required by the NYLL § 191(1)(a)(i) for manual workers. Defendants would pay Plaintiff for only his first 40 hours of work, and then pay him the remainder of the hours, straight-time, approximately a

month later. For example, if Plaintiff worked 66 hours in a week, he would be paid for 40 hours by Defendants a week later, and then paid the remaining 26 hours he worked that week, straight-time, after about 30 days.

31. As a result of Defendants failing to timely pay wages as required by the NYLL § 191(1)(a)(i), Plaintiff has suffered an injury-in-fact, in that the Defendants' late payments caused him to be late on his bills, which caused him to accrue late fees.

32. Plaintiff generally worked 11 hours each day. However, Plaintiff did not receive any spread of hours pay, as one additional hour's pay at the basic minimum wage rate before allowances, for each day Plaintiffs' workday exceeded ten hours.

33. This failure to pay overtime premium wages and pay spread of hours pay, can only be considered a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a), and the NYLL § 663.

34. Individual Defendant, Mr. Noel, is the President of SCS and SR. Mr. Noel participated in the day-to-day operations of SCS, and set the unlawful practice of SCS and SR not paying overtime wages to Plaintiff. Mr. Noel signed checks that were issued to Plaintiff, and thus had actual and constructive knowledge of how Plaintiff was paid. Mr. Noel had the power to hire and fire employees at SCS and SR. As President of SCS and SR, Mr. Bowes set the terms and conditions of employment for the employees such as Plaintiff, the managers under him that supervised Plaintiff, and the company itself. Mr. Noel also maintained the employment records of SCS and SR, such as scheduling and pay records. Upon information and belief, Mr. Noel did not have any

other employment other than serving as President for SCS and SR.

## FLSA COLLECTIVE ACTION ALLEGATIONS

35. Pursuant to 29 U.S.C. §§ 207 & 216(b), Plaintiff brings his First Cause of Action as a collective action under the FLSA, on behalf of himself and the following collective:

> All persons employed by Defendants, at any time from September 24, 2021 to September 24, 2024, through the entry of judgment in this case (the "Collective Action Period"), who worked as carpenters, laborers, and all other hourly workers who were not paid overtime wages (the "Collective Action Members").

36. A collective action is appropriate in this circumstance because Plaintiff and the Collective Action Members are similarly situated, in that they were all subjected to Defendants' illegal policy of failing to pay an overtime premium for work performed in excess of 40 hours per week. As a result of this policy, Plaintiff and the Collective Action Members did not receive the legally-required overtime premium payments for all hours worked in excess of 40 hours per week.

37. The exact number of employees who have suffered the same unpaid overtime wage injury as Plaintiff is unknown at this time but believed to be at least 40 employees.

## CLASS ACTION ALLEGATIONS UNDER RULE 23

38. Plaintiff brings the following class action allegations pursuant to Fed. R. Civ. P. 23, on behalf of:

> All persons employed by Defendants, at any time from September 24, 2018 to September 24, 2024, through the entry of judgment in this case (the "New York Class Period"), who worked as carpenters, laborers, and all other hourly workers who were not paid: overtime wages for weeks in which they worked in excess of 40 hours, and spread of hours pay as required by the NYLL (the "New York Class").

39. Plaintiff is a member of the New York class and is an appropriate person to represent the class.

40. Certification of the New York Class' claims as a class action is the most economical means of resolving the questions of law and fact which are common to Plaintiff's claims and the claims of the New York Class. Plaintiff has standing to seek such relief because of the adverse effect that Defendants' unlawful compensation policies and practices have had on him individually and on the members of the New York Class employed by Defendants. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with a risk of inconsistent adjudications and conflicting obligations. Certification of the proposed class is the most efficient and judicious means of presenting the evidence and argument necessary to resolve such questions for the Plaintiff and the members of the New York Class, and Defendants.

41. The New York Class members are so numerous that joinder of all members is impracticable. While the exact number of class members is unknown at this time, upon information and belief, the New York Class is at least 40 members, that have worked for Defendants during the New York Class Period, which satisfies the numerosity requirement of Rule 23(a)(1).

42. The claims alleged by Plaintiff raise questions of law and fact common to the New York Class. Among these questions are:

a. Whether Defendants employed Plaintiff and members of the New York Class within the meaning of the NYLL;

b. Whether Defendants failed to pay Plaintiff and the members of the New York Class overtime wages, at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in any workweek during the New York Class Period;

c. Whether Defendants failed to pay Plaintiffs and the Class members "spread of hours" premium for each day they worked a shift in excess of ten (10) hours, in violation of the NYLL and the regulations promulgated thereunder;

d. Whether Defendants' violations of the FLSA and NYLL were willful;

e. Whether Defendants are liable for all damages claimed, including but not limited to: compensatory, liquidated, statutory, interest, costs, and attorney's fees.

**FIRST CAUSE OF ACTION**
**FAIR LABOR STANDARDS ACT – UNPAID OVERTIME**

43. Plaintiff, on behalf of himself and the Collective Action Members, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

44. As a result of Defendants' failure to compensate its employees, including Plaintiff and the Collective Action Members, at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours per week, Defendants have violated the FLSA, 29

U.S.C. § 201 *et seq*., including 29 U.S.C. § 207(a)(1) and 215(a), for which Plaintiff and the Collective Action Members are entitled to relief pursuant to 29 U.S.C. § 216(b).

45. Defendants' failure to pay overtime wages to these hourly employees constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

46. The failure to pay overtime has caused Plaintiff and the Collective Action Members to suffer lost wages and interest thereon. As a result, they are entitled to recover from Defendants their unpaid overtime compensation, liquidated damages, attorney's fees, and costs and disbursements of the action pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**
**NEW YORK LABOR LAW – UNPAID OVERTIME**

47. Plaintiff, on behalf of himself, and the Collective Action Members, and the New York Class, repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

48. As a result of Defendants' failure to compensate its employees, including Plaintiff, the Collective Action Members, and the New York Class at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours per week, Defendants have violated the NYLL, N.Y. Comp. Codes R. & Regs. tit. 12, § 142–2.2, for which Plaintiff, the Collective Action Members, and the New York Class are entitled to relief pursuant the NYLL, § 190 et seq.

49. Defendants' failure to pay overtime wages to these hourly employees constitutes a willful

violation of the FLSA within the meaning of NYLL § 663.

50. The failure to pay overtime has caused Plaintiff to suffer lost wages and interest thereon. Plaintiff and Collective Action Members are entitled to recover from Defendants their unpaid overtime compensation, liquidated damages, attorney's fees, and costs and disbursements of the action.

**THIRD CAUSE OF ACTION**
**VIOLATION OF THE SPREAD OF HOURS WAGE LAWS**

51. Plaintiff, the Collective Action Members, and the New York Class repeat and reallege all paragraphs above as though fully set forth herein.

52. Defendants failed to pay Plaintiff, the Collective Action Members, and the New York Class, one additional hour's pay at the basic minimum wage rate before allowances, for each day Plaintiffs' spread of hours exceeded ten hours, in violation of NYLL §§ 650 *et seq*. and 12 N.Y.C.R.R. §§ 146-1.6.

53. Defendants' failure to pay an additional hour's pay for each day Plaintiff's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

54. The amount of damages are to be determined at trial.

**FOURTH CAUSE OF ACTION**
**FAILURE TO PAY TIMELY WAGES UNDER THE NYLL**

55. Plaintiff, the Collective Action Members, and the New York Class repeat and reallege all paragraphs above as though fully set forth herein.

56. Plaintiff, the Collective Action Members, and the New York Class were manual laborers as

defined by the NYLL § 191(1)(a)(i).

57. Defendants would pay Plaintiff, the Collective Action Members, and the New York Class for only their first 40 hours of work, and then pay the remainder of the hours, straight-time, approximately a month later.

58. As a result of this delay in payment, Plaintiff, the Collective Action Members, and the New York Class, have not received payment for their work within seven days, as required by the NYLL § 191(1)(a)(i).

59. Therefore, Plaintiff, the Collective Action Members, and the New York Class are owed wages, liquidated damages, applicable interest, costs, and attorney's fees.

**PRAYER FOR RELIEF**

Therefore, Plaintiff requests that this Court grant the following relief, on behalf of himself, the Collective Action Members, and the New York Class:

a. An order tolling the relevant statutes of limitations;

b. An order declaring that Defendants violated the FLSA and the NYLL;

c. An injunction prohibiting Defendants from violating the FLSA and NYLL as specified in this complaint;

d. An award of unpaid overtime wages due under the FLSA and the NYLL;

e. An award of liquidated damages as a result of Defendants' willful failure to pay overtime wages under the FLSA and NYLL;

f. An award of spread of hours pay under the NYLL;

g. An award of wages and liquidated damages for failure to make timely payments as required by the NYLL;

h. An award of prejudgment and post-judgment interest;

i. An award of costs and expenses of this action together with attorney's fees;

j. An order awarding an increase of the total amount of judgment by 15%, for any amounts that remain unpaid upon the expiration of 90 days of the issuance of judgment, in accordance with the NYLL, § 198(4);

k. An order certifying this action as a collective action under 29 U.S.C. § 216(b), as well as an order certifying the action as a class action under Fed. R. Civ. P. 23, and a designation of undersigned as class counsel;

l. Such other and further relief and this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Dated: November 17, 2024

**s/Brandon A. Thomas**
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