

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CV 08

3525

THEODORE ROOSEVELT, MAQSOOD BATT,  
and SUSHANA GUTHRIE,

TRAGER, J.

Plaintiffs,

COMPLAINT

- against -

JURY TRIAL  
DEMANDED

WALGREENS, CO.,

DOULAK ALJ

FILED  
U.S. DISTRICT COURT E.D.N.Y.  
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\$

Defendant.

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BROOKLYN OFFICE

PRELIMINARY STATEMENT

1. This action seeks redress for serious transgressions of the federal Fair Labor Standards Act and the New York Labor Law. In a fundamental breach of these statutory obligations, Defendant Walgreens, Co., (hereinafter "Defendant") failed to pay Plaintiffs Theodore Roosevelt, Maqsood Batt, Sushana Guthrie (hereinafter "Plaintiffs" or "Mr. Theodore" or "Mr. Batt" or "Ms. Guthrie") overtime compensation and an additional hour of "spread of hours" pay at minimum wage for every day in which they worked more than ten hours.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over Plaintiffs' claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, pursuant to 28 U.S.C. § 1331, because Plaintiffs' Fair Labor Standards Act claims arise under a statute of the United States.

3. This Court has supplemental jurisdiction over Plaintiffs' claims under the New York Minimum Wage Act, N.Y. Labor Law § 650 *et seq.*, pursuant to 28 U.S.C. § 1367, because these claims are so closely related to Plaintiffs' claims under the Fair Labor Standards Act that

they form parts of the same case or controversy under Article III of the United States Constitution.

4. Pursuant to § 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), Plaintiffs have consented in writing to becoming a party to this lawsuit. Plaintiffs' written consent to be part of this action is attached hereto and is incorporated by reference.

5. Venue is vested in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

### **PARTIES**

6. Plaintiffs were employed by Defendant Walgreens, Co. at its business located at 401 College Point Blvd, College Point, New York 11356. Mr. Roosevelt was employed by Defendant from February 2004 through May 2006. Mr. Batt was employed by Defendant from September 2000 through May 2006. Ms. Guthrie was employed by Defendant from August 2005 to December 2005. Mr. Roosevelt resides in Brooklyn, New York. Mr. Batt resides in Queens, New York. Ms. Guthrie resides in Bronx, New York.

7. Defendant was Plaintiffs' employer. Defendant hired, supervised, controlled, and paid them. Defendant Walgreens Co. is a foreign limited liability company registered as doing business in New York with its principal offices located at 200 Wilmot Road, Deerfield, Illinois 60015.

### **FACTUAL ALLEGATIONS**

8. At all times during their employment, Plaintiffs were "employees" as defined in Section 3(e)(1) of the Act, 29 U.S.C. 203(e)(1), and Defendant was their "employers" within the

meaning of Section 3(d) of the Act, 29 U.S.C. 203(d).

9. Walgreens, Co. is a corporation doing business as a retail pharmacy chain and as such is an enterprise as defined in Section 3(r)(1) of the Act, 29 U.S.C. 203 (r)(1), and an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1)(A), 29 U.S.C. 203(s)(1)(A), in that the Defendant's employees are engaged in interstate commerce and Defendant's annual gross volume of sales made or business done exceeds \$500,000.00, exclusive of excise taxes.

10. Plaintiffs were employed by Defendant from approximately September 2000 to May 2006 as assistant store managers in Defendant's retail pharmacy store located at 1401 College Point Blvd, College Point, New York 11356. Plaintiffs were characterized and treated in all respects as employees by Defendant during this time period.

11. Although Plaintiffs were assistant store managers, they did not have the authority to hire or fire other employees. Further, Plaintiffs did not exercise a great deal of discretion and independent judgment in their positions as assistant store managers. Plaintiffs' work was directed by the store managers.

12. Defendant employed plaintiffs within the meaning of Section 3(g) of the Act, 29 U.S.C. 203(g), during all time periods relevant to this complaint.

13. Defendant utilized a work week beginning on Mondays and ending on Sundays during all time periods relevant to this complaint and Plaintiffs reported their hours to Defendant based upon this work week definition. Plaintiffs were paid based upon this Monday to Sunday work week. Plaintiffs' hours of work were determined by Defendant.

14. Despite being scheduled to work 40 hours per week over a 5 day period with

hours either from 8:00 a.m. to 4:00 p.m. or 2:00 p.m. to 10:00 pm, Plaintiffs regularly worked hours in excess of 40 hours per work week for the Defendant during all time periods relevant to this complaint. Plaintiffs regularly performed services for the Defendant's business above and beyond 40 hours in a work week. They were, however, never paid over time pay for any of the hours they worked above 44 hours per week.

15. Plaintiffs were required to commence their work for Defendant at least a half an hour every day they worked before they were actually allowed to punch-in their time cards at the store. During that time, they performed duties for the Defendant to get the store ready to open at 8:00 a.m. including but not limited to, turning off the security alarms, turning on all of the lights, opening the safe, and preparing the cashier drawers. For the shifts beginning at 2:00 p.m., Plaintiffs were also required to commence their work for Defendant at least a half an hour every day they worked before they were actually allowed to punch-in their time cards. During that time, they performed duties for the Defendant including but not limited, covering store assistant's lunch shifts, checking the cashier drawers and transferring notes from the on-shift assistant store manager. The work performed by Plaintiffs was required by Defendant each and every morning and afternoon they worked during all time periods relevant to this complaint, above and beyond their scheduled work hours.

16. Further, on one or more days per week when the store received deliveries from suppliers, Plaintiffs were required to commence their work for Defendant approximately 5 hours before they were actually allowed to punch-in their time cards. During that time, Plaintiffs performed duties for the Defendant including but not limited to, picking up other employees at their homes pursuant to the instruction of the Defendant, driving the other employees to the

store and opening up the store to receive deliveries for the day. The work performed by Plaintiffs were required by Defendant each and every delivery day they worked, at least once a week, during all time periods relevant to this complaint, above and beyond their scheduled work hours.

17. Not only did Plaintiffs commence working before they were allowed to punch-in their time cards, Plaintiffs were also required to continue their work for Defendant for at least three hours every day they worked after they were instructed to punch-out their cards. During this time, they performed additional duties for the Defendant including but not limited to, providing customer service, checking inventory, ordering inventory, determining new product sales, preparing seasonal displays, recalling products, reclaiming stolen or damaged products. The work performed by Plaintiffs were required by Defendant each and every afternoon and night they worked during all time periods relevant to this complaint, above and beyond their scheduled work hours. Plaintiffs typically worked more than ten hours in a single day each week.

18. As part of Mr. Roosevelt's job duties, Mr. Roosevelt was required to prepare the weekly payroll information to send to Defendant's headquarters for the processing of the store employee's paychecks. Mr. Roosevelt was specifically informed by Ms. Toci, the store manager of the Defendant's store located at 1401 College Point Blvd that the store had an allocated budget of a certain number of hours per week for hours and payroll. Mr. Roosevelt was informed by Ms. Toci that as a matter of store policy, he was prohibited from exceeding the allocated budget given to the store when preparing the weekly payroll information, regardless of the actual hours worked by the store's employees.

19. Ms. Toci informed Mr. Roosevelt that the instructions to stay within the allocated budget of hours and payroll for the store were coming from the District Manager, Mr. Zacconi. Mr. Zacconi regularly visited the Defendant' store located at 1401 College Point Blvd and would inspect the store employee's work schedules and payroll information.

20. During all time relevant to this complaint, most, if not all, of the employees worked above and beyond their scheduled hours of work prescribed within the store's budget. In many instances, Plaintiffs were not allowed to take their lunch break/hour because there was so much work to do or their lunch breaks were interrupted due to demands of work required.

21. Despite the reality of the overtime hours worked by all of the employees at the Defendant' store located at 1401 College Point Blvd, Mr. Roosevelt was instructed by Ms. Toci that all hours worked by the employees of the store above and beyond the store's allocated budget should be adjusted or shaved to reflect the schedules and payroll allocated for the store.

22. Mr. Roosevelt disagreed with the instructions he received from Ms. Toci but he was informed that if he did not do what he was told to do, that he would be fired from his job. On average, Mr. Roosevelt would adjust approximately 100 to 150 hours of overtime worked by the employees each week to reflect the allocated budget for the store.

23. Many of the store employees complained to Mr. Roosevelt about the discrepancy between the number of hours they worked and the amount they were paid. Mr. Roosevelt was deeply conflicted by their complaints. Therefore, he reached out to the Loss Prevention Department of the Defendant about the instructions he was receiving from the store manager, Ms. Toci. After Mr. Roosevelt lodged the complaint with Loss Prevention, Defendant failed to

do anything.

24. Throughout Plaintiffs' entire employment with Defendant from the beginning of September 2000 and until the end of May 2006, Plaintiffs worked for Defendant over 40 hours per week and were paid for no more than 44 hours each week. Plaintiffs were not paid at one and one-half times their applicable hourly rate for any hours worked in excess of 44 hours in a work week at any time during the time period relevant to this complaint. Further, Plaintiffs were not paid an additional hour of "spread of hours" pay at minimum wage for every day in which they worked more than ten hours

25. Defendant's failure to pay Plaintiffs their overtime pay and "spread of hours" pay was willful and in bad faith. Defendant had no reasonable grounds for believing that their failure to pay the overtime pay was consistent with the Fair Labor Standards Act or the New York State Minimum Wages Act.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

26. Section 7(a) of the FLSA, 29 U.S.C. § 207(a), provides that no employer engaged in commerce shall employ an employee for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which she is employed.

27. Section 16 of the FLSA, 29 U.S.C. § 216(b), provides that any employer who violates the provisions of 29 U.S.C. §§ 207 shall be liable to the employee or employees affected in the amount of their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages.

28. The United States Department of Labor calculates overtime compensation for employees, like plaintiff, who are paid by the week, by dividing the number of hours worked for each week by the amount of pay for that week. If the employee worked more than 40 hours per week, the employee is also owed one and one-half times their hourly wage (or times the minimum wage, if the hourly wage is less than the minimum wage) for all hours above 40 per week. Additional liquidated damages are due in an amount equal to the total unpaid minimum wages and unpaid overtime compensation.

29. Defendant's failure to pay Plaintiffs their overtime pay violated the Fair Labor Standards Act.

**SECOND CLAIM FOR RELIEF:  
VIOLATION OF NEW YORK STATE LABOR LAW**

30. Plaintiffs repeat and re-allege paragraphs 1 through 29.

31. Pursuant to regulations issued by the State Commissioner of Labor, an employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate in the manner and methods provided in the FLSA. 12 N.Y.C.R.R. § 142-2.2.

32. Pursuant to N.Y. Labor Law §§ 198.1-a and 663, an employer who willfully fails to pay wages and overtime required by the Minimum Wage Act shall be liable, in addition to the amount of any under-payments, for liquidated damages equal to twenty-five percent of the total of such under-payments found to be due him.

33. Defendant's failure to pay Plaintiffs their overtime pay violated the New York Labor Law.

**THIRD CLAIM FOR RELIEF:  
NEW YORK STATE SPREAD OF HOURS**

34. Plaintiffs repeat and re-allege paragraphs 1 through 33.

35. Defendant failed to pay Plaintiffs an extra hour's pay at minimum wage for every day that Plaintiffs worked in excess of ten hours, in violation of New York Labor Law §§ 190, *et seq.*, and 650, *et seq.*, and New York State Department of Labor regulations, 12 N.Y.C.R.R. §§ 137-1.6, 142-2.4.

36. Plaintiffs are entitled to an award of an extra hour's pay for every day that they worked in excess of ten hours, in an amount to be determined at trial, pursuant to New York Labor Law §§ 190, *et seq.*, and 650, *et seq.*, and New York State Department of Labor regulations, 12 N.Y.C.R.R. §§ 137-1.6, 142-2.4.

**FOURTH CLAIM FOR RELIEF:**  
**MAINTENANCE OF EMPLOYMENT RECORDS**

37. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35.

38. Upon information and belief, Defendant intentionally failed to maintain adequate and accurate written records for the hours worked and wages earned by Plaintiffs in order to facilitate their exploitation of Plaintiffs' labor.

39. Defendant's knowing and intentional acts constitute a violation of 29 U.S.C. § 211(c) and 29 C.F.R. § 516.2.

40. Defendant's knowing and intentional acts constitute a violation of N.Y. Lab. Law § 195(4) and 12 N.Y.C.R.R. § 137-2.1.

41. As a result of the foregoing, Plaintiffs have been injured, and Defendant has profited thereby, in an amount to be proven at trial.

**FIFTH CLAIM FOR RELIEF:**  
**NO LUNCH/BREAKS**

42. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 41.

43. Defendant willfully failed to permit Plaintiffs to take a lunch break during their shifts in violation of N.Y. Labor Law 162.

44. Defendant's failure to allow Plaintiffs to take a lunch break violated the New York Labor Law.

**DEMAND FOR JURY TRIAL**

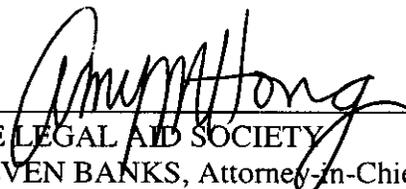
45. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs Roosevelt Theodore, Maqsood Batt and Sushana Guthrie respectfully request this Court to grant him the relief requested as follows:

1. Unpaid overtime pay and unpaid spread of hours pay, plus liquidated damages and/or interest thereon;
2. Pre-judgment interest;
3. Reasonable attorney's fees, costs, and expenses pursuant to 29 U.S.C. § 216(b) and N.Y. Labor Law §§ 198 and 663;
4. The costs and disbursements of this action; and,
5. Such other and further relief that the Court deems just and proper.

Dated: New York, New York  
August 28, 2008

By:   
THE LEGAL AID SOCIETY  
STEVEN BANKS, Attorney-in-Chief  
ADRIENE L. HOLDER, Attorney-in-Charge, Civil Practice

Employment Law Project  
199 Water Street, 3<sup>rd</sup> Floor  
New York, New York 10038  
(212)577-3626

By: Amy M. Hong, Of Counsel (AH 0067)

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

I, Theodore Roosevelt, hereby consent to be a Plaintiff in a lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
August 28, 2008

  
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THEODORE ROOSEVELT

Sworn to before me this  
28nd day of August 2008

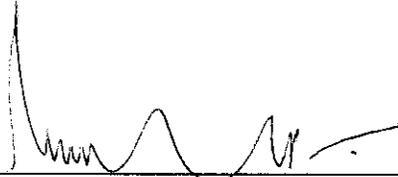
  
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NOTARY PUBLIC

**AMY M. HONG**  
Notary Public, State of New York  
No. 02HO6106886  
Qualified in New York County  
Commission Expires March 15, 2012

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

I, Maqsood Batt, hereby consent to be a Plaintiff in a lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York  
August 22, 2008

  
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MAQSOOD BATT

Sworn to before me this  
22nd day of August 2008

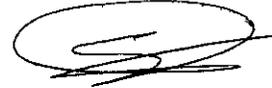
  
\_\_\_\_\_  
NOTARY PUBLIC

**AMY M. HONG**  
Notary Public, State of New York  
No. 02HO6106886  
Qualified in New York County  
Commission Expires March 15, 2012

**SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION**

I, Sushana Guthrie, hereby consent to be a Plaintiff in a lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

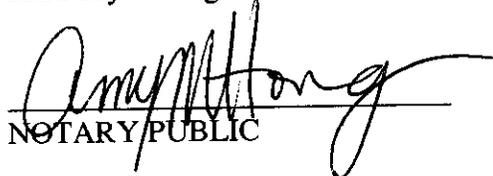
Dated: New York, New York  
August 22, 2008



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SUSHANA GUTHRIE

Sworn to before me this  
22nd day of August 2008

  
NOTARY PUBLIC

**AMY M. HONG**  
Notary Public, State of New York  
No. 02HO6106886  
Qualified in New York County  
Commission Expires March 15, 2012