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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X	
	:
THEODORE ROOSEVELT, MAQSOOD BATT,	:
and SUSHANA GUTHRIE, on behalf of themselves	:
and all others similarly situated,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
WALGREEN, CO. d/b/a Walgreens,	:
	:
Defendant.	:
-----X	

08 CV 3525 (DGT)(CLP)

FIRST AMENDED
COLLECTIVE/
CLASS ACTION
COMPLAINT

Plaintiffs Theodore Roosevelt (“Mr. Roosevelt”), Maqsood Batt (“Mr. Batt”), and Sushana Guthrie (“Ms. Guthrie”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, by their attorneys The Legal Aid Society and Outten & Golden LLP, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE CASE

1. This action seeks redress for transgressions of the federal Fair Labor Standards Act and the New York Labor Law. In a fundamental breach of these statutory obligations, Defendant Walgreen, Co. (“Walgreens” or “Defendant”), which operates a chain of retail drugstores, engaged in an unlawful policy and pattern or practice of requiring Plaintiffs and similarly situated workers who worked in stores located in and around New York City (which, upon information and belief, Walgreens refers to as “District East”) to work substantial periods of time “off the clock,” before and after their scheduled shifts, in an apparent effort to reduce labor costs and limit payroll hours. Furthermore, pursuant to this policy and/or practice, Walgreens failed to record all of the time that these workers worked, including time that they worked in excess of forty hours per work week, by prohibiting them from reporting all of their hours and by shaving time from the workers’ time records.

2. In addition, as part of its unlawful policy and pattern or practice, Walgreens failed to compensate Plaintiffs and similarly situated workers with an extra hour’s pay at the minimum wage rate on days in which they worked more than ten hours.

3. As a result of Defendant’s unlawful policy, pattern, and/or practice, Plaintiffs and similarly situated workers in Walgreen’s District East were not paid for all of the hours they worked, including hours that they worked in excess of forty in a workweek.

4. By the conduct described in this First Amended Complaint, Defendant willfully committed widespread violations of the overtime requirements of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and the overtime and spread-of-hours pay requirements of the New York Labor Law, N.Y. Lab. L. Art. 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations (“NYLL”).

PARTIES

The Plaintiffs

5. Mr. Roosevelt is an adult individual residing in Brooklyn, New York.
6. Mr. Roosevelt was an hourly employee of Walgreens from approximately February 2004 through approximately May 2006.
7. Mr. Batt is an adult individual residing in Passaic, New Jersey.
8. Mr. Batt was an hourly employee of Walgreens from approximately September 2000 through May 2006.
9. Ms. Guthrie is an adult individual residing in the Bronx, New York.
10. Ms. Guthrie was an hourly employee of Walgreens from approximately August 2005 through approximately December 2005.

Walgreens

11. Walgreens is a corporation organized under the laws of Illinois, with its principal place of business at 200 Wilmot Road, Deerfield, Illinois 60015.
12. Upon information and belief, Walgreens owns and operates approximately fifty (50) retail drugstores throughout the New York City metro area.
13. Upon information and belief, Walgreens promulgates the employment policies, including compensation policies, for its New York City drugstores, including those in District East.
14. Walgreens employed Plaintiffs and similarly situated employees within the meaning of the FLSA and the NYLL.

JURISDICTION AND VENUE

15. This Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 216(b).

16. Pursuant to 29 U.S.C. § 216(b), Plaintiffs have consented in writing to become a parties to this lawsuit. Plaintiffs' written consent forms are attached hereto as Exhibit A.

17. This Court has jurisdiction over Plaintiffs' state law claims 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 part of the same case or controversy under Article III of the United States Constitution.

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

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

COLLECTIVE ACTION ALLEGATIONS

20. Plaintiffs bring the First Cause of Action, FLSA claim, on behalf of themselves and all similarly situated persons who have worked for Walgreens as hourly workers at Walgreens stores within District East between May 2005 and the date of final judgment in this action (the "FLSA Collective"). Walgreens store managers are not included in the FLSA Collective definition.

21. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs. Upon information and belief, there are over fifty (50) similarly situated current and former employees of Defendant who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through

Defendant's records. These similarly situated employees should be notified and allowed to opt in to this action pursuant to 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

22. Plaintiffs bring the Second, Third, and Fourth Causes of Action, NYLL claims, under Rule 23 on behalf of themselves and a class of persons consisting of

all persons who have worked for Defendant as hourly workers at Walgreens stores within District East between May 2005 and the date of final judgment in this action (the "Rule 23 Class").

23. Walgreens store managers are not included in the Rule 23 Class.

24. Excluded from the Rule 23 Class are Defendant, Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Walgreens; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

25. The persons in the Rule 23 Class identified above are so numerous that joinder of all members is impracticable.

26. Upon information and belief, the size of the Rule 23 Class is at least fifty (50) individuals, although the precise number of such persons is unknown, and facts on which the calculation of that number depends are presently within the sole control of the Defendant.

27. Defendant has acted or refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

28. There are common questions of law and fact common to the Rule 23 Class which predominate over any questions solely affecting individual members of the Class, including, but not limited to, the following:

(a) whether Defendant failed to keep true and accurate time and pay records for all hours worked by Plaintiffs and the Rule 23 Class;

(b) what proof of hours worked is sufficient where Defendant failed in its duty to maintain true and accurate time records;

(c) whether Defendant failed to compensate Plaintiffs and the Rule 23 Class for all of the work that they required and permitted them to perform;

(d) whether Defendant failed to compensate Plaintiffs and the Rule 23 Class for hours worked in excess of forty hours per work week with appropriate overtime premium wages;

(e) whether Defendant failed to pay Plaintiffs and the Rule 23 Class spread-of-hours pay as required by the NYLL.

(f) whether Defendant engaged in a policy, practice, or pattern of permitting, encouraging, or forcing Plaintiffs and the Rule 23 Class to work “off the clock” and/or failing to compensate Plaintiffs and the Rule 23 Class for all hours worked in excess of 40 hours per workweek;

(g) whether Defendant engaged in a policy, practice, or pattern of unlawfully altering and/or shaving time from the hours that Plaintiffs and the members of the Rule 23 Class worked each work week;

(h) whether Defendant’s policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and

(i) the nature and extent of class-wide injury and the measure of damages for those injuries.

29. The claims of the Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent. Plaintiffs and the Rule 23 Class work, or have worked, for Defendant as hourly workers in Walgreens stores within District East. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL to be paid for all hours worked, to be paid overtime wages, and to be paid spread-of-hours pay. Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendant's failure to comply with the NYLL. Plaintiffs and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendant's common policies, practices, and patterns of conduct.

30. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Rule 23 Class. There is no conflict between the Plaintiffs and the Rule 23 Class.

31. Plaintiffs and the Rule 23 Class have all been injured in that they have been uncompensated or under-compensated as a result of Defendant's common policies, practices, or patterns.

32. A class action is superior to other available methods for the fair and efficient adjudication of this action. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendant's violation of the NYLL as well as their common and uniform policies, practices, and procedures. A class action is a particularly superior method of adjudication in the context of wage and hour litigation where, as here, individual Plaintiffs lack the financial resources to conduct a thorough analysis of

Defendant's payroll and compensation practices and to vigorously prosecute a lawsuit in federal court against a corporate defendant. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

33. Plaintiffs have retained counsel competent and experienced in complex class actions and in labor and employment litigation.

34. This action is properly maintainable under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

CLASSWIDE FACTUAL ALLEGATIONS

35. Walgreens 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.

36. At all times during their employment, Plaintiffs and the members of the Rule 23 Class and the FLSA Collective (collectively "Class Members") were Defendant's "employees" as defined in Section 3(e)(1) of the Act, 29 U.S.C. § 203(e)(1), and under NYLL § 651(5), and Defendant was an "employer" within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), and NYLL § 651(6).

37. Class Members were paid at hourly rates.

38. Upon information and belief, Walgreens maintains control and direction over the operation of its retail stores, including their employment and payroll practices.

Walgreens hired, supervised, and paid the Class Members.

39. Upon information and belief, Walgreens organizes its stores into separate districts. District East is one such district located in the New York City metropolitan area.

40. Upon information and belief, each district is managed by a District Manager who is an employee of Walgreens with power over certain personnel and payroll decisions.

41. Upon information and belief, Walgreens develops and implements a weekly budget for each retail drugstore, including a specified weekly budget for the labor costs of each store.

42. Upon information and belief, in approximately May 2005, Richard Zaccone (“Mr. Zaccone”) became the District Manager of Walgreens’s District East stores. In this capacity, Mr. Zaccone was responsible for enforcing the budget and ensuring that the labor costs for each store within his district did not exceed that store’s budgeted amount.

43. Upon information and belief, there are approximately twenty (20) Walgreens stores located in the borough of Queens. Upon information and belief, some or all of the stores located in Queens are within District East and are or were managed by Mr. Zaccone.

44. Upon information and belief, District East also includes at least some Walgreens stores located outside Queens.

45. Mr. Zaccone is or was the manager of all stores within District East.

46. Upon information and belief, Mr. Zaccone instructed store managers of the stores in District East that each store had a weekly labor budget and that the store’s weekly labor costs could not exceed the budgeted amount.

47. Upon information and belief, numerous or all stores within Mr. Zaccone's district could not operate effectively within the allocated labor budget.

48. Upon information and belief, store managers implemented the instructions from Mr. Zaccone by 1) requiring Class Members to work before and after their scheduled shifts while insisting that they "punch-in" and "punch-out" according to their scheduled shifts; 2) adjusting or "shaving" hours from Class Members' weekly payroll reports; 3) instructing designated employees to shave Class Members' reported hours on a weekly basis, and/or 4) requiring Class Members to work during scheduled lunch and other breaks without reporting the hours worked during those breaks.

49. Further, upon information and belief, as a result of this district-wide policy and pattern or practice, the store managers regularly required and/or permitted Class Members to work more than 40 hours per week but did not report all of the hours they worked in excess of 40 hours on payroll reports prepared at the end of each week.

50. Upon information and belief, the off-the-clock and other unpaid work performed by Class Members was integral and necessary to Defendant's business.

51. Upon information and belief, as a result of its district-wide policy and pattern or practice, Defendant regularly required Class Members to work more than ten hours during a work day without paying them an extra hour of pay at the minimum wage rate.

52. Upon information and belief, Mr. Zaccone regularly visited the stores in District East and reviewed Class Members' work schedules and payroll information.

53. Class Members have been victims of Defendant's district-wide policy, pattern and/or practice of violating the FLSA and NYLL, by *inter alia*, 1) willfully failing to fully compensate Class Members for all of the work performed for Defendant's benefit; 2)

willfully failing to record all of the time that Class Members worked for the benefit of Defendant, including by discouraging Class Members from reporting their time and/or adjusting or shaving time from Class Members' time records; 3) willfully failing to pay Class Members premium pay of one and one-half their hourly rate for all hours worked in excess of 40 hours per week; 4) willfully failing to pay Class Members an additional hour's pay at the minimum wage for each day in which they worked more than ten hours.

54. Upon information and belief, all of the work that Class Members performed was assigned, required, and/or permitted by Defendant and/or Defendant was aware of all of the work that Class Members performed.

55. Upon information and belief, Defendant's unlawful conduct described herein is pursuant to a policy or practice of attempting to minimize labor costs by violating the FLSA and the NYLL.

56. Defendant's conduct has been widespread, repeated, and willful, and has caused significant damages to Class Members.

FACTUAL ALLEGATIONS RELATING TO INDIVIDUAL PLAINTIFFS

A. Theodore Roosevelt

57. Mr. Roosevelt worked as an hourly worker at the Walgreens store located at 401 College Point Blvd, College Point, New York 11356 ("College Point Store") from approximately February 2004 through May 2006.

58. Upon information and belief, the College Point Store is located within Walgreen's District East.

Mr. Roosevelt Was Not Paid for All of the Hours He Worked.

59. Beginning in approximately May 2005, Mr. Roosevelt regularly worked more than 50 hours per week but was not paid for many hours he worked, including many hours he worked in excess of 40 hours in a workweek.

60. Mr. Roosevelt also worked days of more than 10 hours for which he was not paid an extra hour's pay at the minimum wage rate.

Walgreens required Mr. Roosevelt to work off-the-clock.

61. Between approximately May 2005 and the end of his employment at Walgreens, Mr. Roosevelt regularly performed work for Walgreen's benefit off-the-clock, before and after his scheduled shift. Walgreens did not pay Mr. Roosevelt for this off-the-clock work.

62. In particular, Mr. Roosevelt often began work at least a half hour before he was allowed to punch-in for his scheduled shift. Mr. Roosevelt's off-the-clock work included, but was not limited to: preparing the store for opening hours, turning off the security alarms, turning on all the lights, opening the safe, preparing the cash registers, checking the cashier drawers, and transferring notes from the on-shift assistant store manager.

63. In addition, on one or more days per week, when the store received deliveries, Mr. Roosevelt was required to commence work well more than a half hour before his scheduled shift. Mr. Roosevelt's off-the-clock duties on these days included, but were not limited to, picking up other employees at their homes, driving these employees to the College Point Store, and preparing the store to receive deliveries.

64. Mr. Roosevelt also regularly continued working well after his scheduled shift ended. Mr. Roosevelt's post-shift work included, but was not limited to, providing customer

service, checking inventory, ordering inventory, preparing seasonal displays, recalling products, and reclaiming stolen or damaged products.

65. Mr. Roosevelt's off-the-clock work was directed and required by Defendant.

Walgreens prohibited Mr. Roosevelt from accurately crediting and recording all of the hours he and other Class Members worked.

66. In addition to requiring him to work off the clock, Walgreens prohibited Mr. Roosevelt from recording all of the hours he worked each work week and instructed him not to accurately credit and record all of the hours worked by Class Members in the College Point Store.

67. Upon information and belief, in or around August 2005, Mjellman Toci ("Ms. Toci") became the store manager of the College Point Store.

68. In or around September 2005, in his responsibility of helping to prepare the weekly payroll information for employees in the College Point Store, including Class Members, Mr. Roosevelt was instructed to enter the number of hours worked into a central database to create a weekly report ("Payroll Report").

69. Ms. Toci told Mr. Roosevelt that the store had an allocated budget for labor hours and employee compensation and that, pursuant to instructions she received from Mr. Zaccone, Mr. Roosevelt was prohibited from reporting in the system a number of hours that exceeded the allocated budget, regardless of the actual hours worked by the store employees.

70. Pursuant to these instructions, Ms. Toci told Mr. Roosevelt to reduce the number of hours worked by store employees on the Payroll Report and warned him that if he did not reduce the reported hours as instructed, he would be fired from his job. Each

week, Ms. Toci gave Mr. Roosevelt specific instructions, detailing the number of hours to shave for each employee.

71. Ms. Toci reviewed the Payroll Report each week to ensure that the reported hours did not exceed the labor budget.

72. During his tenure at the College Point Store, Mr. Roosevelt, at Ms. Toci's direction, reduced the reported hours of hourly employees at the College Point Store, including his own.

73. Each week, approximately 100 to 150 overtime hours worked by College Point Store employees were shaved from the Payroll Report.

74. Upon information and belief, pursuant to this district-wide policy and pattern or practice, Defendant willfully failed to keep accurate records of the hours worked by Mr. Roosevelt and the Class Members.

75. Pursuant to this district-wide policy, pattern and/or practice, Defendant willfully failed to properly compensate Mr. Roosevelt and the Class Members for all hours that they worked, including hours worked in excess of forty in a workweek.

B. Maqsood Batt

76. Mr. Batt worked as an hourly worker at the College Point Store from approximately December 2004 through March 28, 2006.

Mr. Batt Was Not Paid for All of the Hours He Worked.

77. Beginning in approximately May 2005, Mr. Batt regularly worked more than 40 hours per week for which he was not properly compensated.

78. Mr. Batt also often worked days of more than 10 hours for which he was not paid an extra hour's pay at the minimum wage rate.

Walgreens required Mr. Batt to work off the clock.

79. Between approximately May 2005 and the end of his employment at Walgreens, Mr. Batt regularly worked off-the-clock, before and after his scheduled shift. Walgreens did not pay Mr. Batt for this off-the-clock work.

80. In particular, Mr. Batt regularly started work prior to the beginning of his scheduled shift to prepare the store for opening hours.

81. In addition, on one or more days per week, when the store received deliveries, Mr. Batt was required to commence work well more than a half hour before his scheduled shift to help with deliveries.

82. Mr. Batt also regularly worked approximately thirty minutes to one hour after the end of his scheduled shift. Mr. Batt's off-the-clock work included, but was not limited to, providing customer service, checking inventory, ordering inventory, preparing seasonal displays, recalling products, and reclaiming stolen or damaged products. On some occasions, Mr. Batt worked for approximately three hours after his scheduled shift, depending on the season and the store's labor needs.

Walgreens failed to accurately record and credit hours Mr. Batt worked.

83. In addition to requiring him to work off-the-clock, pursuant to its district-wide policy, pattern, and/or practice, Walgreens willfully shaved time from Mr. Batt's time records, including time he worked in excess of 40 hours in a workweek.

C. Sushana Guthrie

84. Ms. Guthrie worked as an hourly employee at the College Point Store from approximately August 2005 through December 2005.

Ms. Guthrie Was Not Paid for All of the Hours She Worked.

85. Beginning in approximately August 2005, Ms. Guthrie regularly worked approximately 50 to 55 hours per week but was not paid for many of the hours she worked, including hours she worked in excess of 40 in a workweek.

86. Ms. Guthrie also often worked days of more than 10 hours for which she was not paid an extra hour's pay at the minimum wage rate.

Walgreens required Ms. Guthrie to work off the clock.

87. Between approximately August 2005 and the end of her employment at Walgreens, Ms. Guthrie regularly worked off-the-clock, before and after her scheduled shift. Walgreens did not pay Ms. Guthrie for this off-the-clock work.

88. In particular, Ms. Guthrie regularly started work prior to the beginning of his scheduled shift to prepare the store for opening hours.

89. Ms. Guthrie regularly worked hours in excess of 50-55 hours per week for Defendant without compensation for many of these hours, including hours she worked in excess of 40 hours per week.

90. For example, Ms. Guthrie frequently began working approximately 45 minutes prior to her scheduled shift and on one or more days per week, when the store received deliveries, Ms. Guthrie was required to commence work well more than a 45 minutes before her scheduled shift to help with deliveries.

91. Further, Ms. Guthrie frequently continued working for up to three hours after her scheduled shift. Ms. Guthrie was also regularly required to work during unpaid lunch breaks and other work breaks without reporting the time worked during those breaks.

92. During the first week of her employment, Ms. Guthrie attempted to punch-in when she was required to begin working and prior to her scheduled shift. Ms. Toci

witnessed Ms. Guthrie's attempt to punch in prior to her shift and ridiculed Ms. Guthrie for wanting to be paid for work performed off-shift.

Walgreens failed to accurately record and credit hours Ms. Guthrie worked.

93. In addition to requiring her to work off-the-clock, pursuant to its district-wide policy, pattern, and/or practice, Walgreens willfully shaved time from Ms. Guthrie's time records, including time she worked in excess of 40 hours in a workweek.

CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF:
VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Brought on behalf of Plaintiffs and the FLSA Collective)**

94. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

95. 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.

96. 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, an in an additional equal amount as liquidated damages.

97. Defendant's willful failure to pay Plaintiffs and the FLSA Class their overtime pay violated the Fair Labor Standards Act.

**SECOND CLAIM FOR RELIEF:
VIOLATION OF NEW YORK STATE LABOR LAW
(Brought on behalf of Plaintiffs and the Rule 23 Class)**

98. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

99. 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 by FLSA. 12 N.Y.C.R.R. § 142-2.2.

100. Defendant's willful failure to pay Plaintiffs and the Rule 23 Class their overtime pay violated the New York Labor Law.

**THIRD CLAIM FOR RELIEF:
NEW YORK STATE SPREAD-OF-HOURS
(Brought on behalf of Plaintiffs and the Rule 23 Class)**

101. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

102. Defendant failed to pay Plaintiffs and the Rule 23 Class an extra hour's pay at minimum wage for every day that Plaintiffs and the Rule 23 Class worked in excess of ten hours, in violation of New York Labor Law § 190, *et seq.*, and New York State Department of Labor regulations, 12 N.Y.C.R.R. §§ 137-1.7, 142-2.4.

103. Plaintiffs and the Rule 23 Class 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.

104. Defendant's willful failure to pay Plaintiffs and the Rule 23 Class their spread of hours pay violated the New York Labor Law.

**FOURTH CLAIM FOR RELIEF:
MAINTENANCE OF EMPLOYMENT RECORDS
(Brought on behalf of Plaintiffs and all Class Members)**

105. Plaintiffs repeat and reallege all allegations in all preceding paragraphs as if fully set forth herein.

106. Upon information and belief, Defendant willfully failed to maintain adequate and accurate written records of the actual hours worked and true wages earned by Plaintiffs and Class Members in order to facilitate their exploitation of Plaintiff's and Class Members' labor.

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

108. Defendant's willful acts constitute a violation of N.Y. Labor Law § 195(4) and 12 N.Y.C.R.R. § 137-2.1.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves, the FLSA collective and the Rule 23 Class, respectfully request that this Court enter a judgment providing the following relief:

(a) Authorizing Plaintiffs at the earliest possible time to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have been at any time from May 2005 up through and including the date of the issuance of court-supervised notice, been employed by Defendant as hourly paid employees in Walgreen's District East. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper hourly compensation and premium overtime wages;

- (b) An Order requiring Defendants to pay all unpaid overtime wages and an equal amount as liquidated damages pursuant to 29 U.S.C. § 201 *et seq.* and the United States Department of Labor regulations;
- (c) Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (d) Designation of Plaintiffs as representatives of the Rule 23 Class, and counsel of record as Class Counsel;
- (e) Certification of this case as a collective action pursuant to FLSA;
- (f) Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under New York Labor Law, Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations;
- (g) An order requiring Defendant to pay all unpaid overtime pay pursuant to New York Labor Law Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations and New York common law (Plaintiffs do not seek liquidated damages under the New York Labor Law or New York common law);
- (h) Pre-judgment interest;
- (i) Plaintiffs do not seek liquidated damages under the New York Labor Law on behalf of the Class;
- (j) Attorneys' fees pursuant to 29 U.S.C. § 216(b) and New York Labor Law §§ 198 and 663;
- (k) The costs and disbursements of this action;
- (l) Such other relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury in this action.

Dated: January 16, 2009
New York, New York

Respectfully submitted,

/S/ Amy M. Hong
Amy M. Hong

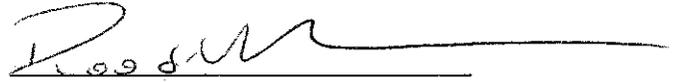
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SECTION 216(b) FAIR LABOR STANDARDS ACT AUTHORIZATION

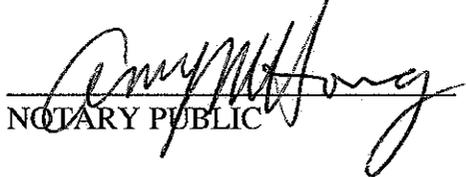
I, Theodore Roosevelt, hereby consent to be a Plaintiff in a lawsuit pursuant to Section 216(b) of the Federal Fair Labor Standards Act.

Dated: New York, New York
January 15, 2009



THEODORE ROOSEVELT

Sworn to before me this
15th day of January 2009



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 this lawsuit pursuant to Section 216(b) of the federal Fair Labor Standards Act.

Dated: New York, New York
January 14, 2009



MAQSOOD BATT

Sworn to before me this
14th day of January, 2009



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

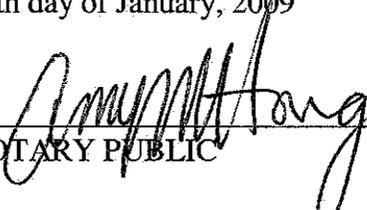
I, Sushana Guthrie, hereby consent to be a Plaintiff in this lawsuit pursuant to Section 216(b) of the federal Fair Labor Standards Act.

Dated: New York, New York
January 14, 2009



SUSHANA GUTHRIE

Sworn to before me this
14th day of January, 2009



NOTARY PUBLIC

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