

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAHIRA ROMERO, on behalf of herself  
and all others similarly situated,

Plaintiff,

COMPLAINT

-against-

**JURY TRIAL DEMANDED**

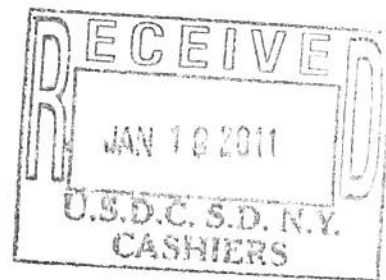
H.B. AUTOMOTIVE GROUP, INC., and  
HAROLD BENDELL, individual,

Defendants.  
-----X

Plaintiff, JAHIRA ROMERO (hereinafter "Plaintiff"), on behalf of herself and all others similarly situated, by and through her attorneys The Law Office of BORRELLI & ASSOCIATES, P.L.L.C. and VALLI KANE & VAGNINI LLP, brings this action for damages and other legal and equitable relief from the Defendants, H.B. AUTOMOTIVE GROUP, INC. ("H.B.") and HAROLD BENDELL, individual ("Bendell") (collectively, hereinafter, "Defendants"), for violations of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.* ("FLSA"), the New York State Labor Law ("Labor Law"), and any other cause(s) of action that can be inferred from the facts set forth herein.

**INTRODUCTION**

1. This is an action brought by Plaintiff challenging acts committed by Defendants against Plaintiff amounting to wage and hour violations, as well as collective and class claims of violations of Federal and New York State wage and hour laws



2. Plaintiff also brings this action on her own behalf and those similarly-situated pursuant to the Federal and New York State laws requiring overtime pay for employees, as well as those prohibiting retaliation for complaining about violations of the FLSA and Labor Law.
3. Defendants committed violations of these laws by engaging in a systematic scheme of failing to compensate Plaintiff and similarly-situated employees their statutorily required overtime pay, as well as at any rate of pay in accordance with the Federal and State statutorily required minimum rate of pay per hour worked.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; (iii) under 29 U.S.C. § 201 et. seq.
5. The Court's supplemental jurisdiction is invoked pursuant to 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.
6. Venue is proper in this Court pursuant to 29 U.S.C. §§ 201-219, in as much as this judicial district lies in a State in which the unlawful employment practices occurred. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (c), in that Defendants maintain offices, conduct business and reside in this district.

### **PARTIES**

7. Plaintiff is a citizen of New York and resides in Bronx County, New York.
8. Upon information and belief, Defendant H.B. is a corporation organized under the laws of the State of New York and has a principle place of business within Bronx County, New York. H.B. is a chain of automotive retail and repair stores that operates at various locations throughout the City of New York. Upon information and belief, the amount of qualifying annual volume of business for H.B. exceeds \$500,000.00, and thus subjects the business to the FLSA's overtime requirements. Additionally, all of H.B.'s employees are engaged in interstate commerce as they all handle goods that have been and continue to be moved in interstate commerce. This independently subjects H.B. to the overtime requirements of the FLSA.
9. Upon information and belief, Defendant Bendell is a citizen of New York and resides in Bronx, New York. Defendant Bendell has an ownership stake in Defendant H.B., is the Chairman and Chief Executive Officer of Defendant H.B., is directly responsible for implementing the illegal policies of Defendant H.B. complained of herein, and is thus personally liable to Plaintiff for unpaid overtime wages. Further, Bendell qualifies as an employer for employees of H.B. under the FLSA and New York Labor Law.

### **COLLECTIVE ACTION ALLEGATIONS**

10. Plaintiff seeks to bring this suit pursuant to 29 U.S.C. § 216(b) on her own behalf as well as those in the following class:

Current and former employees of Defendants who perform any work in any of Defendants' locations as non-managerial employees who give consent to file a cause of action to recover overtime compensation which is legally due them for the time worked in excess of forty (40) hours in a given work week, as well as to

recover the difference between the amount of wages actually paid to them and the statutorily minimum amount due ("FLSA Plaintiffs").

11. Plaintiff is similarly situated to all such individuals because while employed by Defendants she and all FLSA Plaintiffs performed similar tasks, were subject to the same laws and regulations, were paid in the same or similar manner, were paid the same or similar rate, were required to work in excess of 40 hours per work-week, were not paid the required one and a half (1 1/2) times their respective regular rates of pay for overtime worked, and were not paid at an amount equal to the minimum hourly required rate of pay per hour worked.
12. Defendants treated all FLSA Plaintiffs similarly in requiring them to work in excess of 40 hours per workweek without overtime compensation. Plaintiffs and FLSA Plaintiffs work and/or worked for Defendants in their place of business in 11 hour shifts, five (5) days per work. They were regularly scheduled in excess of five (5) shifts per week of eight (8) hours per shift and thus were specifically scheduled to work more than 40 hours per work week, yet Defendants did not pay them the statutorily required overtime compensation. They also were not compensated at an hourly rate in accordance with the minimum legally required hourly rate of pay
13. All FLSA Plaintiffs are engaged in interstate commerce as they are required to handle goods that have been and are regularly moved in interstate commerce.
14. Defendants are and have been aware of the requirement to pay Plaintiff and FLSA Plaintiffs for overtime work and in accordance with the minimum rate of hours laws, yet purposefully chose not to.

### **RULE 23 CLASS ALLEGATIONS**

15. Plaintiff additionally seeks to maintain this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on her own behalf as well as those who are similarly situated and are also FLSA Plaintiffs, who, during the applicable statutes of limitations, were subjected to violations of the New York Labor Law.

16. Under F.R.C.P. 23(b)(3), Plaintiff must plead that the class:

- a. Is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class which predominate any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;
- d. The representative will fairly and adequately protect the class; and,
- e. A class action is superior to other methods of adjudication.

17. The Class which Plaintiffs seek to define includes:

All persons employed by Defendants to perform any work in any of Defendants' locations in any capacity during the statutory period within the State of New York who (1) worked in excess of forty (40) hours per week and were not compensated with overtime pay; and/or (2) were not compensated at a rate in accordance with the minimum rate of hours laws ("Class Plaintiffs").

#### **Numerosity**

18. Upon information and belief, during the previous six (6) years, Defendants have, in total, employed well in excess of one hundred (100) employees in order to staff the multiple locations of the automotive facilities that Defendants operate throughout New York City.

Common Questions of Law and/or Fact

19. There are questions of law/fact that govern over the claims which are available to each and every Class Plaintiff, including but not limited to the following:
- a. Whether Class Plaintiffs were scheduled to work and/or required to work in shifts of approximately eleven (11) hours per day, five (5) days per week;
  - b. Whether Class Plaintiffs were compensated for overtime pay pursuant to Defendants' policies;
  - c. Whether Defendants failed to pay Class Plaintiffs for the hours worked in excess of forty (40) hours;
  - d. Whether Class Plaintiffs were compensated at a rate less than the statutorily required minimum hourly rate of pay;
  - e. Whether Defendants kept accurate records of hours worked by Class Plaintiffs; and,
  - f. Whether Defendants have any affirmative defenses for any of these claims.

Typicality of Claims and/or Defenses

20. Plaintiff was employed by Defendants' in the same capacity as all of Defendants' employees holding the position of "Salesperson" or "Inventory Manager." At all times Plaintiff worked within Defendants' offices as was required. Her duties included selling cars when employed as a Salesperson but she was not compensated at a rate that was equal to the minimum wage throughout her employment. When employed as Inventory Manager Plaintiff was responsible for maintaining records of what inventory was maintained on Defendants' property. This was the same for all of Defendants' employees carrying the title of Salesperson or Inventory Manager. Thus, there are common

questions of law and fact which are applicable to each and every one of Defendants' employees holding those exact or similar non-managerial positions.

21. This treatment included, but was not limited to, failure to pay employees the proper overtime wages and failure to compensate employees in accordance with the statutorily prescribed minimum rate of pay.

#### Adequacy

22. The representative party is no longer employed with Defendants as she has been terminated. Plaintiff has kept substantial records from her time working for Defendants and would properly and adequately represent the current and former employees who have been subjected to the treatment alleged herein. Additionally, Plaintiff's attorneys have substantial experience in this field of law.

#### Superiority

23. Any lawsuit brought by an employee of Defendants would be identical to a suit brought by any other employee for the same violations and separate litigation would cause a risk of inconsistent results. Plaintiff has no facts relating to the class claims that are atypical from those of the class. Indeed, upon information and belief, Plaintiff was treated identically to other employees aside from her individual claim for retaliation.
24. Indeed, because Plaintiff is no longer employed by Defendants she will be able to further represent Class Plaintiffs by acting without fear of further retaliation and harassment. Thus, this means of protecting all of Class Plaintiffs' rights is superior to any other method.

### **FACTS**

25. Plaintiff commenced her employment with Defendants' beginning in June 2009 in the position of "Salesperson."
26. Plaintiffs worked at the Defendants' facility located at 3333 Boston Post Road, Bronx, New York 10469.
27. The policies and practices at all Defendants' locations were nearly identical, and they did not change significantly during the period of time when Plaintiff was employed by Defendants.
28. In that position of Salesperson, Plaintiff was primarily responsible for selling automobiles to Defendants' customers.
29. While holding the position of Salesperson, Plaintiff was a full-time employee of Defendant who was expected to work and did in fact work approximately fifty to fifty-five (50-55) hours per work.
30. For her services, Defendants compensated Plaintiff at a rate of \$150 per week, plus a commission for any automobiles sold.
31. During weeks where Plaintiff did not sell any automobiles, which was quite frequent, even though Plaintiff was required to work and did in fact work approximately fifty to fifty-five (50-55) hours per week, Defendant only compensated Plaintiff \$150 for that week of work.
32. Such compensation is not in excess of one and a half (1 1/2) times the federal and state minimum rate of pay requirements.



33. All of Defendants' employees holding the same or similar title of Salesperson were compensated in a manner identical to the manner in which Defendants compensated Plaintiff while Plaintiff held that position.
34. In or around November of 2009, Defendants removed Plaintiff from the position of Salesperson, and placed Plaintiff in the position of "Inventory Manager."
35. Plaintiff continued to work at the same location.
36. As an Inventory Manager, Plaintiff's work duties primarily included keeping inventory of the automotive goods kept in Defendants' Sales Department.
37. Plaintiff, throughout her tenure of employment with Defendants in the position of Inventory Manager, was a full-time employee of Defendants who was paid on a weekly basis, for only her first forty (40) hours worked per workweek.
38. Throughout her tenure as Inventory Manager, Plaintiff was required to work, and did in fact work, on an average basis, fifty-five (55) hours per week.
39. For her services, as reflected on her pay stubs that Defendants supplied to her every two (2) weeks, Defendants compensated Plaintiff for only the first forty (40) hours worked per work week and did not compensate Plaintiff for any hours worked in excess of forty (40) in any amount, much less at the statutorily prescribed rate of one and one half times Plaintiff's normal rate of pay, which was \$11 per hour.
40. All of Defendants' non-managerial, non-commissioned employees worked similar hours to Plaintiff and they were not compensated at the legally mandated overtime rate for hours worked per week in excess of forty (40).

41. In or around November 2010, Plaintiff complained to her manager, Milsord Mills, about the fact that she was not being compensated at any rate for hours worked per week in excess of forty (40).

42. In direct retaliation for Plaintiff having attempted to assert her rights, Defendants terminated Plaintiff's employment on or around November 16, 2010.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS ON  
BEHALF OF PLAINTIFF AND ALL COLLECTIVE PLAINTIFFS**

**For Violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219**

43. Plaintiff and all other employees of Defendants holding the title of "Salesperson" or other similar title were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate of pay, much less at the statutorily required time and a half pay, and were also on average not compensated at the minimum hourly rate of pay, much less at a rate of one and a half (1 ½) times the applicable minimum wage laws. These practices were willful and lasted for the duration of the relevant time periods.

44. Plaintiff and all other employees of Defendants holding the title of "Inventory Manager" or other similar title were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate of pay, much less at the statutorily required time and a half pay.

45. These practices are in willful violation of the Fair Labor Standards Act.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS ON  
BEHALF OF PLAINTIFF AND ALL CLASS PLAINTIFFS**

**For Violation of the New York Labor Law §§ 650 et. seq.**

46. Plaintiff and all other employees of Defendants holding the title of “Salesperson” or other similar title were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate of pay, much less at the statutorily required time and a half pay, and were also on average not compensated at the minimum hourly rate of pay, much less at a rate of one and a half (1 ½) times the applicable minimum wage laws. These practices were willful and lasted for the duration of the relevant time periods.
47. Plaintiff and all other employees of Defendants holding the title of “Inventory Manager” or other similar title were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate of pay, much less at the statutorily required time and a half pay.
48. Plaintiff, and all other employees of Defendants holding the titles of “Salesperson,” “Inventory Manager” or other similar title were not compensated in accordance with the New York Labor Law’s Spread of Hours Provision.
49. These practices are in willful violation of the New York Labor Law §§ 650 et. seq.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS ON  
BEHALF OF PLAINTIFFS DIAZ AND COLLADO**

**Retaliation in Violation of the New York Labor Law**

50. Plaintiff questioned and complained that she and others were not being compensated in accordance with the New York Labor Law as well as the FLSA.
51. In direct retaliation for her complaints, Defendants terminated Plaintiff’s employment.

52. This action was in direct violation of the New York Labor Law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff and the Classes demand judgment against Defendants as follows:

1. Demand a jury trial on these issues to determine liability and damages;
2. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;
3. A judgment declaring that the practices complained of herein are unlawful and in violation of New York Labor Law § 215; Fair Labor Standards Act, 29 U.S.C. §§ 201-219, (“FLSA”); the New York Labor Law, §§ 190 et seq. (“NYLL”); the New York Labor Law §§ 650 et. seq.; and the New York “spread of hours” pay required under 12 N.Y.C.R.R. § 142-2.4.
4. All damages which Plaintiff and the Classes have sustained as a result of Defendants’ conduct, including back pay, front pay, general and special damages for lost compensation and job benefits they would have received but for Defendants’ improper practices;
5. An award to the Plaintiff and the Classes of compensatory damages, including but not limited to damages for emotional pain and suffering where appropriate;
6. An award to the Plaintiff and Classes of pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid wages from the date such wages were earned and due;

7. An award to the Plaintiff and Classes for the amount of unpaid wages, including interest thereon, and penalties subject to proof;
8. Exemplary and punitive damages in an amount commensurate with Defendants' ability and so as to deter future malicious, reckless, and/or intentional where appropriate;
9. Awarding Plaintiff her costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs;
10. Reinstatement;
11. Pre-judgment and post-judgment interest, as provided by law; and
12. Granting Plaintiff other and further relief as this Court finds necessary and proper.

Dated: January 14, 2011  
Carle Place, New York

Respectfully submitted,

**VALLI KANE & VAGNINI, LLP**

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