

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES LABBE, individually, and on behalf of all
others similarly situated,

Plaintiff,

vs.

TOWN SPORTS INTERNATIONAL, LLC
and DOE's 1 through 100, inclusive,

Defendants

Index No.:

Date Summons Filed: 10/4/12

Plaintiff designates New York
County as the place of trial.

The basis of venue is
CPLR Sec. 503. 12103913

SUMMONS

Defendant's principal
office is located at
5 Penn Plaza, Fourth Floor
New York, NY 10001

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action
and to serve a copy of your answer on Plaintiff's Attorney within twenty (20) days after the
service of this summons, exclusive of the day of service, where service is made by delivery
upon you personally within the State of New York, or within thirty (30) days after completion
of service where service is made in any other manner. In case of your failure to appear or
answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: October 4, 2012



Marc A. Rapaport
Rapaport Law Firm, PLLC
*Attorneys for the Representative Plaintiff
And the Plaintiff Class*
350 Fifth Avenue, Suite 4400
New York, New York 10118
(212) 382 - 1600

FILED

OCT 04 2012
COUNTY CLERKS OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES LABBE, individually, and on behalf of all
others similarly situated,

Index No.:

Plaintiff,

CLASS ACTION COMPLAINT

vs.

JURY TRIAL DEMANDED

TOWN SPORTS INTERNATIONAL, LLC
and DOES 1 through 100, inclusive,

Defendants.

12103948

Representative Plaintiff, JAMES LABBE (“Representative Plaintiff” or
“Plaintiff”), by his attorneys, RAPAPORT LAW FIRM, PLLC, as and for his Complaint
against TOWN SPORTS INTERNATIONAL, LLC, and DOES 1 through 100, inclusive
(collectively “TSI” or “Defendant”) alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action, seeking unpaid wages, including minimum wage
and unpaid overtime compensation and interest thereon, reimbursement for unlawful
deductions, liquidated damages and other penalties, injunctive and other equitable relief
and reasonable attorneys’ fees and costs, under, *inter alia*, New York State Labor Law,
New York Wage Payment Act, the New York Minimum Wage Act, 12 N.Y.C.R.R. Part
142 and other appropriate rules, regulations, statutes and ordinances.

2. The Representative Plaintiff brings this action on behalf of himself and all
other persons similarly situated (hereinafter referred to as the “Class Members” and/or
the “Plaintiff Class”) who are, or have been, employed by Defendant as personal trainers
within the applicable statutory period.

FILED
OCT 04 2012
COUNTY CLERK'S OFFICE
NEW YORK

3. The Class Period is designated as the time from October 4, 2005, through the trial date, based upon the allegation that the violations of New York's wage and hour laws, as described more fully below, have been ongoing since that time.

4. During the Class Period, Defendant has had consistent policies of: (1) encouraging, and/or requiring its employees, including Representative Plaintiff and members of the Class, to work in excess of forty (40) hours per week without paying them overtime compensation as required by New York's wage and hour laws; (2) failing to pay Plaintiff and similarly situated employees for the full amount of hours actually worked; (3) failing to deliver written notice to Plaintiff and similarly situated employees of the regular hourly rate of pay and overtime rate of pay, as mandated by N.Y. Lab. Law § 195(1); and (4) unlawfully requiring Plaintiff and similarly situated employees to pay for and provide their own uniforms and equipment for use in performing their job functions.

INTRODUCTION

5. According to legislative findings, numerous studies have linked long work hours to increased rates of accident and injury and a loss of family cohesion when either or both parents are kept away from home for extended periods of time, on either a daily or weekly basis. New York's Wage Payment Act, Minimum Wage Act and 12 N.Y.C.R.R. Part 142 provide protections to workers, including, but not necessarily limited to, entitlements to wages, including overtime pay.

6. Plaintiff is informed and believes and, based thereon, alleges that, within the Class Period, Defendant maintained and operated numerous health and fitness facilities throughout New York, including but not limited to facilities known as "New

York Sports Clubs,” and makes the strength-building and cardiovascular fitness equipment and services (e.g., personal training sessions) at these facilities available to the public on a membership basis. In so doing, Defendant has employed hundreds, if not thousands, of individuals in recent years alone as personal trainers, non-overtime-exempt employees who are entitled to, *inter alia*, be paid for all hours worked, including minimum wages, and overtime compensation, at their regular rate of pay, to be reimbursed for all business expenses related to Defendant’s operations, and to be paid said wages and reimbursed for said business-related expenses in a timely manner.

7. Defendant’s personal trainers are responsible for facilitating individual training sessions with Defendant’s members specifically tailored to address the members’ personal fitness goals.

8. Personal trainers often hold several sessions a day, and are responsible for performing additional tasks such as attending continuing education/training programs, researching and preparing a customized workout plan for each individual client, completing paperwork, attending meetings, soliciting clients, re-racking weights, scheduling training sessions, and a host of other activities required for the performance of their positions with and for the benefit of Defendant.

9. Notwithstanding the foregoing, no matter how many hours are spent by personal trainers performing tasks for the benefit of Defendant, personal trainers are paid only for the length of time associated with the sessions they hold.

10. Moreover, Plaintiff is informed and believes and, based thereon, alleges that Defendant knew and/or should have known that its personal trainers are and, at all times during the Class Period, were performing work off-premises (e.g., at home, at

continuing education/training programs) for which Class Members are/were not being compensated and are/were incurring business-related expenses for which they are/were not being reimbursed by Defendant.

11. Despite actual knowledge of these facts and legal mandates, Defendant TSI has enjoyed an advantage over its competition and has disadvantaged its workers by electing not to pay all wages due and/or provide reimbursement of business-related expenses to its instructors.

12. Plaintiff is informed and believes and, based thereon, alleges that officers and directors of TSI knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

13. Despite Defendant's knowledge of the Class' entitlement to wages for all hours worked and expense reimbursements for all applicable work periods, Defendant failed and continues to fail to provide the same for all applicable work periods in willful violation of New York law. This action is brought to redress and end this ongoing pattern of unlawful conduct once and for all.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action because Defendant operates its business in the State of New York, County of New York.

15. Venue in this Court is proper under Civil Practice Law & Rules § 503. Defendant regularly conducts business in the State of New York and within New York County. Defendant has an office located at 5 Penn Plaza, New York, New York, 10001, and represents that it provides services in New York County and elsewhere in the City of

New York. Some of the work that is the subject of Plaintiff's claims was performed in New York County. Accordingly, Plaintiff's causes of action arise in this venue.

16. Plaintiff brings causes of action based solely on and arising under New York law. The claims of Plaintiff and the Class are claims for violations of New York law. These claims arise from Defendant's systematic wage abuse against its personal trainer workforce in New York. Plaintiff makes no claims arising under federal law in this action.

PLAINTIFF

17. Representative Plaintiff is a natural person and was, during the Class Period, employed by TSI as a personal trainer, a non-exempt employment position, at one or more of Defendant's New York fitness facilities.

18. As used throughout this Complaint, the term "Class Members" and/or the "Plaintiff Class" refers to the named Plaintiff as well as each and every person eligible for membership in the class of persons further described and defined herein. At all times herein relevant, Plaintiff is/was a person within the class of persons further described and defined herein.

19. Plaintiff brings this action on behalf of himself and as a class action, pursuant to Civil Practice Law & Rules §§ 901 *et seq.*

DEFENDANT(S)

20. At all times herein relevant, Defendant New York Sports Club was a corporation, duly licensed, located and doing business in, but not limited to, the City, County and State of New York.

21. Plaintiff is informed and believes and, based thereon, alleges that Defendant has, during the applicable limitations period, directly or indirectly employed and/or exercised control over the wages, hours, and working conditions of Plaintiff and Class Members across the state of New York.

22. Those defendants identified as Does 1 through 100, inclusive, were, at all times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours, and/or working conditions of Plaintiff and Class Members at various New York locations, as identified in the preceding paragraph.

23. Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive, and, therefore, sues these defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants is/was responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein-alleged and that Plaintiff's and Class Members' damages, as herein-alleged, were proximately caused thereby.

24. Plaintiff is informed and believes and, on that basis, alleges that, at all times herein-mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

CLASS ACTION ALLEGATIONS

25. Representative Plaintiff brings this action individually and as a class action on behalf of all persons similarly situated and proximately damaged by TSI's conduct, including, but not necessarily limited to, the following Plaintiff Class:

All persons employed by Town Sports International, LLP in the State of New York as personal trainers at any time on or after October 4, 2005.

26. Defendant and its officers and directors are excluded from the Plaintiff Class.

27. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is, at least, in the hundreds, if not thousands of individuals. Membership in the Class will be determined by and upon analysis of employee and payroll records, among other records maintained by Defendant.
- b. Commonality: Plaintiff and Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
 - 1) Whether Defendant unlawfully failed to pay overtime compensation in violation of the New York Minimum Wage Act, New York Labor Law §§ 650, *et seq.*, the Wage Payment Act, New York Labor Law §§ 190, *et seq.*, and the supporting New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 142;
 - 2) Whether Defendant violated New York law by requiring Plaintiff and Class Members to pay all or a portion of the normal business expenses of Defendant;
 - 3) Whether Defendant violated and/or continues to violate New York law by failing to keep accurate records of Plaintiff's and Class Members' hours of work;

- 4) Whether Defendant violated New York Labor Law § 195(1) by failing to deliver written notices and/or wage statements setting forth, *inter alia*, the amount of regular hourly pay and overtime rate of pay; rates of pay and basis thereof; name of the employer; any “doing business as” names of the employer; telephone number of the employer; main address of the employer, and other vital, material and necessary information.
- 5) Whether Defendant violated New York Labor Law § 195(1) by failing to preserve the information contained (and/or that was required to be contained in) each wage statement to members of the Class.

- b. Typicality: Plaintiff’s claims are typical of the claims of the Plaintiff Class. Plaintiff and all members of the Plaintiff Class sustained injuries and damages arising out of and caused by Defendant’s common course of conduct in violation of state law, as alleged herein.
- c. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- d. Adequacy of Representation: Plaintiff is an adequate representative of the Plaintiff Class, in that Plaintiff’s claims are typical of those of the Plaintiff Class and Plaintiff has the same interests in the litigation of this case as Class Members. Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class as a whole. Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

28. As described herein, Defendant has, for years, knowingly failed to adequately compensate those employees within the class definition identified above for wages, including minimum wage and premium (overtime) wages due, under the New

York Wage Payment Act, Labor Law § 190, *et seq.*, the New York Minimum Wage Act, Labor Law § 650, *et seq.*, and New York Department of Labor Regulations, 12 N.Y.C.R.R. Part 142. Among other means, Defendant engaged in unlawful business practices requiring employees to work numerous hours of overtime on a daily and/or weekly basis.

29. Moreover, Defendant failed to provide Plaintiff and Class Members with accurate semimonthly itemized statements of the total number of hours worked by each, and all applicable hourly rates in effect during each pay period, in violation of New York law. In doing so, Defendant has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (e.g., the full number of hours worked) and financial impact of its wrongdoing.

30. Moreover, according to Defendant's policies, all Class Members were required to incur business expenses related to the operations of Defendant.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
UNLAWFUL FAILURE TO PAY MINIMUM WAGES

31. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

32. Defendant's failure to compensate the Representative Plaintiff and other members of the Class at the statutory minimum wage rate of pay violates the New York Minimum Wage Act, Labor Law Article 19 §§ 650, *et seq.*

33. During the Class Period, Plaintiff and Class Members performed work for Defendant, oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The precise number of hours will be proven at trial.

34. During the Class Period, Defendant refused to compensate Plaintiff and Class Members for all of the wages earned, in violation of New York law.

35. As a result of the foregoing, the Representative Plaintiff seeks judgment against Defendant on his own behalf, and on behalf of those similarly situated Class Members, for all unpaid wages, including minimum wage owed by Defendant to the Representative Plaintiff and the Class, pursuant to the New York Minimum Wage Act, Labor Law Article 19 §§ 650, *et seq.*, as well as liquidated damages, and such other legal and equitable relief from Defendant's unlawful and willful conduct as the Court deems just and proper.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(Pursuant to New York Labor Law §§ 190, *et seq.*, §§ 650, *et seq.*
and 12 N.Y.C.R.R. PART 142)

36. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

37. The foregoing conduct, as alleged, violates the New York Wage Payment Act, Labor Law §§ 190, *et seq.*, the New York Minimum Wage Act, Labor Law §§ 650, *et seq.*, and the supporting Department of Labor Regulations, 12 N.Y.C.R.R. Part 142 (collectively referred to as the "New York Labor Laws").

38. At all relevant times, Defendant has been, and continues to be, an "employer" within the meaning of New York Labor Law § 651. At all relevant times, Defendant has employed, and continues to employ, employees, including the Representative Plaintiff and each of the Class Members, within the meaning of the New York Labor Laws.

39. The New York Labor Laws require an employer, such as Defendant, to pay overtime compensation to all non-exempt employees. The Representative Plaintiff and the Class Members are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

40. As a result of Defendant's failure to pay wages earned and due, and its decision to withhold wages earned and due, to the Representative Plaintiff and Class Members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Defendant has violated, and continue to violate, the New York Labor Laws.

41. The Representative Plaintiff, on behalf of himself and the Class Members, seeks recovery of attorneys' fees and costs of this action to be paid by Defendant, as provided by New York Labor Law § 663(1).

42. The Representative Plaintiff, on behalf of himself and the Class Members, seeks the amount of underpayments based on Defendant's failure to pay one and one half times the regular rate of pay for work performed in excess of forty hours, as provided by New York Labor Law § 663(1), as well as liquidated damages, and such other legal and equitable relief from Defendant's unlawful and willful conduct as the Court deems just and proper.

43. Plaintiff further demands an award of interest, costs and attorneys' fees.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
FAILURE TO COMPLY WITH NOTIFICATION REQUIREMENTS AND TO
MAINTAIN RECORDS

(New York Labor Law §§ 195 and 661; 12 N.Y.C.R.R. § 142-2.6)

44. The Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth at length herein.

45. New York Labor Law sets out notice and record keeping requirements governing employers in the State of New York. Employers are required to keep true and accurate records reflecting the employment of the Representative Plaintiff and the members of the Class. Prior to October 26, 2009, employers were required to notify their employees at the time of hiring of the rate of pay and regular pay designated by the employer. Effective on October 26, 2009, employers were (and continue to be) required to notify employees in writing at the time of hiring of, among other things, the rate of pay and, for employees who are eligible for overtime, the overtime rate of pay. Defendant is in violation of the foregoing.

46. Pursuant to N.Y.C.R.R. § 142-2.6, Defendant is required to establish, maintain, and preserve for a period of not less than six (6) years, weekly payroll records that, *inter alia*, shall show for each employee: the name and address; social security number; wage rate; number of hours worked daily and weekly, including time of arrival and departure of each employee; amount of gross wages; deductions from gross wages; allowances, if any, claimed as part of the minimum wage; and net wages paid. By failing to maintain true, accurate and legible records, Defendant has systematically violated N.Y.C.R.R. § 142-2.6.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge and decree that this is a proper class action and certify the proposed Class under Civil Practice Law & Rules §§ 901 *et seq*;

2. That the Court declare, adjudge and decree that Defendant violated the minimum wage provisions of New York State laws as to the Representative Plaintiff and the Plaintiff Class;

3. That the Court declare, adjudge and decree that Defendant violated the overtime provisions of New York State laws as to the Representative Plaintiff and the Plaintiff Class;

4. That the Court declare, adjudge and decree that Defendant willfully violated its legal duties to pay minimum wages and overtime compensation as required under New York State law;

5. That the Court declare, adjudge and decree that Defendant willfully violated its notification and record keeping obligations with regard to employees under New York State law;

6. That the Court make an award to the Representative Plaintiff and the Plaintiff Class of damages and/or restitution for the amount of unpaid compensation, unpaid overtime compensation, including interest thereon, and statutory penalties in an amount to be proven at trial;

7. That the Court make an award to the Representative Plaintiff and the Plaintiff Class of reimbursement for all unlawful deductions;

8. For all other Orders, findings and determinations identified and sought in this Complaint;

9. For interest on the amount of any and all economic losses, at the prevailing legal rate;

10. For reasonable attorneys' fees, as provided by law; and

11. For costs of suit and any and all such other relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Civil Practice Law & Rules § 4101, Plaintiff demands a trial by jury on all questions of fact raised by the Complaint.

Dated: October 4, 2012

RAPAPORT LAW FIRM, PLLC

By:



Marc A. Rapaport, Esq.
Attorney for the Representative Plaintiff
And the Plaintiff Class
350 Fifth Avenue, Suite 4400
New York, New York 10118
(212) 382-1600

NOTICE OF ENTRY

Sir : PLEASE TAKE NOTICE that the within is a true-certified-copy of a

duly entered in the office of the clerk of the within named court

on
Dated:

Yours, etc.

RAPAPORT LAW FIRM, PLLC

Attorney(s) for

Office and Post Office Address
EMPIRE STATE BUILDING
350 FIFTH AVENUE, SUITE 4400
NEW YORK, NEW YORK 10118

To:

Attorney(s) for

NOTICE OF SETTLEMENT

SIR : PLEASE TAKE NOTICE that

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court

at

on the

day of

at

M.

Dated:

Yours, etc.

RAPAPORT LAW FIRM, PLLC

Attorney(s) for

Office and Post Office Address
EMPIRE STATE BUILDING
350 FIFTH AVENUE, SUITE 4400
NEW YORK, NEW YORK 10118

To:

Attorney(s) for

Esq.

Index No.:

20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JAMES LABBEE, individually, and on behalf of all
others similarly situated

Plaintiff,

-against-

TOWN SPORTS INTERNATIONAL, LLC.,

Defendant.

SUMMONS AND COMPLAINT

Signature (Rule 130.11(a))

Print name beneath

Marc A. Rapaport

RAPAPORT LAW FIRM, PLLC

Attorney(s) for Plaintiff

Office and Post Office Address, Telephone
EMPIRE STATE BUILDING
350 FIFTH AVENUE, SUITE 4400
NEW YORK, NEW YORK 10118
(212) 382-1600

To:

Esq.

Attorney(s) for

Service of a copy of the within

Dated, N.Y.,

is hereby admitted:

Attorney(s) for

BLACKSTONE LEGAL SUPPLY
555 GREENWICH ST. • HEMPSTEAD, NY 11550 • (600) 632-2273

ORIGINAL

ORIGINAL