

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	
<b>ANGELA MARIA PUERTA,</b>	:
	:
Plaintiff,	:
	:
-against-	:
	:
	:
<b>DARREN DAVY and ASMAA DAVY,</b>	:
	:
Defendants.	:
-----X	

CASE NO.  
**COMPLAINT**  
**PLAINTIFF DEMANDS**  
**TRIAL BY JURY**

Plaintiff, Angela Maria Puerta, by her attorneys, Rapaport Law Firm, PLLC, alleges as follows for her Complaint against Defendants Darren Davy (“Mr. Davy”) and Asmaa Davy (“Ms. Davy”) (collectively, “Defendants”):

**INTRODUCTION**

1. For more than two years, Angela Maria Puerta (“Ms. Puerta” or “Plaintiff”), worked as a nanny and housekeeper at two of Defendants’ properties, including their principal home located in Manhattan. Ms. Puerta worked inhumanely long hours, performed arduous tasks, and endured verbal abuse, taunts, threats and hostile work conditions until her employment was unlawfully terminated on or about July 28, 2016 because Ms. Puerta requested to take time off due to her chronic medical condition of gastritis.

2. Ms. Puerta brings this action against Defendants for failure to pay statutorily-required minimum wage rates, unpaid overtime and liquidated damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq., New York Labor Law (“NYLL”) § 663.1 and 652(1), § 142-2.2 and 142-2.1 of Title 12 of New York’s Codes, Rules and Regulations (“NYCRR”); statutory damages under NYLL § 198 for violating NYLL §

195's mandatory notice provisions; and unpaid wages and liquidated damages under NYLL § 198(1-a) for violating NYLL § 193, 191, and 198(3). This action further seeks damages for Defendants' unlawful deductions from Ms. Puerta's pay, in violation of New York Labor Law § 193.

3. This action is also brought to remedy discrimination on the basis of ethnicity, national origin, and disability in violation of New York Executive Law § et seq. (the "New York State Human Rights Law").

#### JURISDICTION & VENUE

4. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331, 1337 and 29 U.S.C. § 216(b).

5. This Court has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1367.

6. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2).

#### THE PARTIES

7. Ms. Puerta is a resident of the State of New York, County of Queens because that is where she is domiciled. 28 U.S.C. § 1391(c)(1). Plaintiff resides at 8652 85<sup>th</sup> Street, Woodhaven, New York 11421.

8. Defendant Darren Davy is an individual who resides at 1212 Fifth Avenue, New York, New York (the "Fifth Avenue Apartment").

9. Defendant Asmaa Davy is an individual who resides in the City, County and State of New York at the Fifth Avenue Apartment.

#### FACTS

10. Plaintiff was employed by Defendants from in or about April 2014 through on or about July 28, 2016 at the Defendants' three-bedroom Fifth Avenue Apartment and,

on various occasions, at the Defendants' weekend/summer lakefront estate located in Livingston Manor, New York (the "Livingston Manor Estate").

MARCH – JUNE 2014 (THE "FIRST THREE MONTHS"):

11. During the First Three Months of Plaintiff's employment with the Defendants (i.e., beginning in or about March 2014 to in or about June 2014), Plaintiff worked seven days per week (overnight, from 7:00 p.m. to 7:00 a.m.) without being permitted to take scheduled or uninterrupted breaks.

12. During the First Three Months, Plaintiff's principal duty consisted of caring for the Defendants' son, who, at that time, was less than one year of age.

13. Plaintiff was required to remain on duty through the entire night without any scheduled break, and she was forbidden from leaving the Defendants' apartment during the entire 12 hours of her overnight shift. She was required to remain in the immediate vicinity of the Defendants' son, and she was under constant watch of the Defendants, who had arranged for her to be monitored at all times via video camera.

14. For her work during the First Three Months, Defendants compensated Plaintiff with \$350.00 per week, which amounts to \$8.75 per hour for the first forty hours that Plaintiff worked per week, and Defendants paid no compensation whatsoever for the remaining 44 hours per week that Plaintiff worked. Stated differently, Plaintiff received \$4.16 per hour - an amount that falls far below minimum federal and state minimum wage.

15. During the First Three Months, being under the constant eye of the Defendants' video camera without scheduled breaks was mentally taxing for Plaintiff, particularly because Ms. Davy demanded that Plaintiff remain by the side of Defendants' son.

16. The mental and physical toll inflicted on Plaintiff is exemplified by an incident in which Plaintiff became so exhausted that she stumbled and fell to the floor, causing her foot to swell and become sore.

17. Although Plaintiff's twelve-hour shifts during the First Three Months were above NYLL's 10-hour threshold for spread-of-hours pay, Defendants made no such payments to Plaintiff, and they are liable for unpaid spread-of-hours pay and liquidated damages, as detailed below.

18. During the First Three Months, on approximately six weekends, Plaintiff was required to accompany the Defendants and their Children to the Defendants' Livingston Manor Estate. On such occasions, Plaintiff worked around-the-clock for two-day periods, with no means of leaving the Livingston Manor Estate during the entire period and – as Defendants required of her in Manhattan – Plaintiff was required to spend entire overnight periods in the same bedroom as Defendants' son, with no private space for sleeping. On such occasions, Plaintiff received an extra fifty dollars (\$50.00) per day, which amounts to a callously inhumane rate of pay for said 48-hour periods of approximately \$4.16 per hour.

**EMPLOYMENT FROM JULY 2014 THROUGH JULY 28, 2016:**

19. Commencing in or about July 2014 through on or about July 28, 2016, Plaintiff worked for Defendants as their live-in nanny for the Defendants' two minor children and housekeeper. Plaintiff was told that her weekly pay would be \$700.00. However, she was not told what her typical starting time would be or what her weekly hours would be. In fact, throughout this period, Plaintiff was required to be on duty virtually around-the-clock.

20. Plaintiff worked far in excess of forty-four (44) hours per week. Plaintiff cared for the Defendants' two minor children at all hours of the day and night. Plaintiff provided personal hygiene care, dressing and bathing, babysitting, changing diapers, prepared meals, taking the children to school; accompanying and supervising the parties' son, including at Central Park; and countless other caretaking tasks for the Defendants' children.

21. Defendants also required that Plaintiff perform physically taxing housekeeping work at the Defendants' Fifth Avenue Apartment and at their Livingston Manor Estate.

22. Defendants required Plaintiff to wash and iron clothes; perform errands outside of the home; and perform general household cleaning, including mopping, vacuuming, clean bathrooms, and sweeping floors throughout both the Fifth Avenue Apartment and Livingston Manor Estate. She was further responsible for making beds, washing dishes, bathing and walking the Defendants' dog, and running errands to grocery stores and pharmacies.

23. The Defendants' Livingston Manor Estate has six bathrooms, and Plaintiff was responsible for cleaning all six bathrooms and all other indoor areas of the home.

24. When Plaintiff commenced serving as Defendants' around-the-clock, live-in nanny and housekeeper, Plaintiff was told her weekly pay would be \$700 per week. Plaintiff received no compensation whatsoever for the extreme overtime that Defendants required her to work.

25. Defendants required Plaintiff to be at their beck and call twenty-four hours a day, seven days per week without scheduled breaks, and Plaintiff endured a work hours that

were so long and extreme that she regularly had to forego showers and suffered from fatigue.

26. Plaintiff was required to utilize a cellular telephone to communicate with Ms. Davy on occasions when she was directed to perform errands and other duties away from the residences and/or to receive instructions and communications from Ms. Davy when Plaintiff was working at the Fifth Avenue Apartment and Ms. Davy was away. However, Plaintiffs never compensated Plaintiff for her cellular telephone costs.

27. Plaintiff typically commenced her workdays, seven days per week, at 6:00 a.m. when the Defendants' young son would awaken. After helping the Defendants' son wash and get dressed and cooking breakfast for Defendants' son, Plaintiff was then required to continuously perform housekeeping, childcare, and other household tasks until late at night.

28. On weekdays, Plaintiff cleaned the entire Fifth Avenue Apartment (3 bedrooms/3 bathrooms) twice per day, and she cleaned Defendants' master bedroom three times per day, including the bedroom's closet and bathroom.

29. On weekends, Plaintiff cleaned Defendants' Livingston Manor Estate, which has six bedrooms and six bathrooms. Plaintiff also washed and ironed all bedding and table cloths at least three times per week.

30. Plaintiff was not afforded private time for herself. Nor was Plaintiff provided with any living quarters at the Fifth Avenue Apartment, even though she was required to remain there 24 hours per day, except for brief periods in which was dispatched to do errands. At the Fifth Avenue Apartment, Plaintiff slept in the Defendants' son's bedroom on a cushion on the floor.

31. During nighttime hours, Plaintiff was required to be at the beck and call of the Defendants and be ready to help the Defendants' children if they were to awaken during the nighttime hours. For example, when the son would awaken during the night from nightmares, Plaintiff was expected to comfort the Defendants' son until his fear subsided and he was able to go back to sleep. Plaintiff was required to be immediately available for Defendants' son all night long. This exhausting and physically-taxing mandate made it impossible for Plaintiff to sleep restfully during the entire two years of her servitude for the Defendants. Defendants made no provision for Ms. Puerta to receive five hours of uninterrupted sleep each night, and Defendants made no provision for Ms. Puerta to receive three work-free hours for meals each day.

32. In addition to caring for the Defendants' son, Plaintiff was also required to assist with Defendants' daughter by taking the daughter to and from school via taxi several days per week; organizing the Defendants' daughter's bedroom on a daily basis; and, on occasion, accompanying the Defendant's daughter at horseback-riding lessons and dancing classes.

33. Defendants' refusal to allow Plaintiff any private time was so extreme that Plaintiff lacked sufficient free time to shop for her own clothing. To solve this problem, Plaintiff relied on her daughter in Columbia to send clothing to her.

34. Plaintiff was forbidden from taking time off to obtain medical care. For example, on one occasion, Plaintiff was suffering severe pain, weakness, swelling and vomiting from gastritis, a chronic and serious medical condition that has afflicted Plaintiff for many years and that becomes symptomatic in times of high stress. Ms. Davy refused Plaintiff's entreaties for time off for a brief visit to a doctor. In fact, Ms. Davy responded

by mocking Plaintiff, telling her that Plaintiff could not afford treatment by a physician in Manhattan given her meager earnings.

35. Because of Defendants' refusal to accommodate Plaintiff's request to take time off to visit a doctor, Plaintiff's gastritis worsened and caused increasing levels of discomfort and swelling. Ultimately, Plaintiff suffered through the flare up and self-treated the condition by altering her diet.

36. The lack of personal space and private time inflicted a heavy physical and emotional toll on Plaintiff. The emotional stress inflicted on Plaintiff was made even worse by the abusive treatment she endured at the hands of the Defendants.

37. In addition to refusing time off for medical treatment, Defendants cruelly did not allow Plaintiff to take time off to spend holidays with friends and family. Instead, Defendants would insist that Plaintiff spend Christmas, Easter and other holidays in a state of around-the-clock servitude for Defendants at the Livingston Manor Estate.

38. For example, in 2015, Plaintiff expressed her wish to attend Catholic religious services for Easter and Christmas holidays. However, Defendants insisted that Plaintiff spend the entirety of these important religious holidays in isolation at the Defendant's Livingston Manor Estate caring for the Defendants' son.

39. Defendants' conduct in refusing to allow Plaintiff to observe the Christmas holiday in 2015 was particularly distressing to Plaintiff because Plaintiff's adult daughter had travelled from Columbia to New York City to celebrate Christmas with Plaintiff.

40. In December 2015, Plaintiff's daughter was in New York City for approximately one-month – a trip that Plaintiff and her daughter had long planned for. During that visit, Defendants did not allow Plaintiff time off to spend with her daughter



except for a single afternoon to pick her daughter up from the airport. Plaintiff's request for a second afternoon off to drop her daughter off at the airport for her daughter's return flight to Columbia was denied by Ms. Davy.

41. During her daughter's one-month stay in Manhattan, Plaintiff was only able to spend brief moments with her daughter when she was running errands for Defendants or accompanying the Defendants' children outside of the Fifth Avenue Apartment and in the playroom of the building where the Fifth Avenue Apartment was located.

#### HOSTILE WORK ENVIRONMENT

42. Ms. Davy pervasively denigrated Ms. Puerta by making slurs and demeaning comments based on Ms. Puerta's ethnicity and national origin (Colombian).

43. Through her comments and actions, Ms. Davy created an intolerably abusive work environment for Ms. Puerta, replete with actions and comments that a reasonable person would find intimidating, ridiculing, denigrating, and insulting, and that was sufficiently severe and pervasive so as to alter the conditions of Ms. Puerta's employment.

44. Ms. Davy repeatedly stated to Ms. Puerta that Ms. Puerta, as someone of Colombian descent, was estúpida (stupid), a puta de mierda (slut from shit) and that Colombians are "narco traffickers" and "terrorismos". On one occasion, Ms. Davy told Plaintiff, "go to Columbia, the country of narco traffickers and terrorismo".

45. Ms. Davy repeatedly told Plaintiff that Plaintiff was "vomito" ("vomit") and "meurtas de hambre" ("poor trash").

46. On occasions too numerous to mention, when items at the Fifth Avenue Apartment and/or the Livingston Manor were misplaced, Ms. Davy would refer to Plaintiff and another Hispanic employee at the residence as "ladronas" ("thieves").

47. On one occasion, when Plaintiff suffered from a sore throat, Ms. Davy refused to allow her to take cough drops, claiming that the smell of the cough medicine was bothersome to her.

48. Ms. Davy would humiliate Plaintiff by suggesting that as someone of Columbian and Hispanic descent, Plaintiff was “born to clean floors with shit” and “you are here because my shit is better than anyone”. These obscenely offensive and discriminatory remarks were regularly repeated by Ms. Davy.

49. Upon information and belief, as a result of Ms. Davy’s stereotypical and demeaning attitude toward individuals of Latino ethnicity and Colombian descent, Ms. Davy had no hesitation in subjecting Ms. Puerta to egregiously subhuman conditions of employment, including a work schedule that was so extreme that it was tantamount to servitude.

50. Plaintiff’s days and nights were so constricted by Defendants’ requirement that she remain constantly at work that she had only slight amounts of time to take showers. There were days when Plaintiff was deprived of time to take a shower. On most days, Plaintiff would go the entire day without showering until 10:00 p.m. at night, when she found a small moment of respite.

51. From July 2014 through July 2016, Plaintiff was essentially in a state of continuous servitude, with the exception of a three-week period in which Plaintiff travelled to Columbia on the death of her husband.

**DEMEANING TERMINATION OF PLAINTIFF’S EMPLOYMENT:**

52. In or about the last week of July, 2016, Plaintiff’s fatigue and discomfort from gastritis became so severe that she approached Ms. Davy and informed Ms. Davy that

she was experiencing illness.

53. During the afternoon of July 28, 2016, while Plaintiff was working for Defendants at the Defendants' Livingston Manor Estate, Plaintiff asked Ms. Davy for a few days off from work to obtain medical treatment for exhaustion, stress, fatigue, and gastritis.

54. Ms. Davy responded by firing Plaintiff on the spot. When Plaintiff asked why she was being fired merely for asking time to see a doctor, Defendant screamed at her. Defendant threatened to call the police if Plaintiff did not leave the Livingston Manor Estate immediately and told Plaintiff that she would kill Plaintiff if Plaintiff tried to do anything.

55. Plaintiff put her clothing in plastic bags and tried to return to New York City. As Plaintiff was leaving with her clothing in plastic bags, Ms. Davy taunted her with bigoted comments including "go to Columbia; go to the narco traffic country"; and "I will never walk where you walk because you don't have anything and look what I have".

56. Because there were no buses, Plaintiff was forced to spend the night at the house of the Defendants' caretaker.

#### FIRST CAUSE OF ACTION

#### UNPAID OVERTIME AND MINIMUM WAGE IN VIOLATION OF THE FLSA

57. The preceding allegations of the Complaint are incorporated herein by reference.

58. During the First Three Months (March – June 2014, twelve weeks), Plaintiff generally worked an average of approximately 84 hours per week, yet she was never paid overtime for hours worked in excess of 40 per week.

59. In 1974 Congress amended the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., to include within its coverage private domestic workers.

60. FLSA Section 2 (entitled “Congressional finding and declaration of policy”) provides, in pertinent part, that “Congress ... finds that the employment of persons in domestic service in households affects commerce.” 29 U.S.C. § 202(a).

61. FLSA Section 207 provides, in pertinent part:

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.\*\*\*

(l) Employment in domestic service in one or more households

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section.

29 U.S.C.A. § 207(a)(1) and (l).

62. Accordingly, for hours worked in excess of 40 hours per week during the First Three Months of her employment (i.e., the period during which Plaintiff did not reside with Defendants), Plaintiff was entitled to overtime pay at a rate not less than one and one-half times the regular rate at which she was employed.

63. Plaintiff is presumed to have been hired to work for eight hours per day.

64. During the First Three Months she worked for Defendants, Plaintiff’s weekly wage was \$350.

65. During the time she worked for Defendants, Plaintiff's regular rate of pay was \$8.75 (\$350/40).

66. The circumstances surrounding Defendants' brazen disregard of overtime and wage laws compellingly show that Defendants' violations were willful and wanton. Mr. Davy is a sophisticated businessman and investor who operates and manages a hedge fund. In his capacity as hedge fund manager, as well as in his personal affairs, Mr. Davy has had the benefit of receiving advice and representation by sophisticated legal counsel. Despite their sophistication and financial resources, Defendants violated substantial aspects of state and federal wage laws applicable to Ms. Puerta's employment, including, inter alia, failing to pay overtime; failing to provide spread-of-hours pay; failing to comply with record keeping requirements; failing to provide notices informing Ms. Puerta of her rate of pay (NYLL § 198(1-b)); and failing to provide wage statements (NYLL § 195(3)). The vastness Defendants' of violations shows their lack of good faith efforts at compliance with the law.

67. The willfulness of Defendants' wage violations is also demonstrated by their egregious inhumanity toward Ms. Puerta, which – as detailed above – included a work environment that was laden with demeaning slurs toward Ms. Puerta based on her Hispanic ethnicity and national origin (Colombian) and the Defendants insistence that Ms. Puerta be in a state of servitude at all hours of the day and night, seven days a week. Similarly, Defendants' termination of Ms. Puerta for having asked for some time off to get medical treatment and rests reflects Defendants' callous disregard of New York Executive Law and their callous indifference toward Ms. Puerta's well-being.

68. Plaintiff is entitled to unpaid overtime, liquidated damages, prejudgment interest, legal fees, and costs of this lawsuit.

SECOND CAUSE OF ACTION  
UNPAID OVERTIME AND MINIMUM WAGE VIOLATIONS  
UNDER NEW YORK LAW

69. The allegations of the preceding paragraphs of the Complaint are incorporated herein by reference.

70. Under NYLL Article 19, “employer” is defined to include “any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group of persons acting as employer.” NYLL § 651(6).

71. Defendants were “employer[s]” for purposes of the provisions of the statutes and administrative regulations described above.

72. The NYCRR provision containing the New York State Department of Labor’s Minimum Wage Order for Miscellaneous Industries and Occupations, enacted pursuant to the NYLL, also contains a specific definition for employee. 12 NYCRR § 142–1.1, et seq.

73. Under these administrative regulations, “employee” is defined as “any individual employed, suffered or permitted to work by an employer,” with various exceptions not relevant to the instant case. 12 NYCRR § 142–2.14.

74. Plaintiff was an “employee” for purposes of the provisions of the statutes and administrative regulations applicable to all of Ms. Puerta’s claims herein.

75. Defendants failed to comply with, inter alia, NYLL § 663(1) and 12 NYCRR § 142-2.2, in that Plaintiff often worked for Defendants in excess of the maximum hours provided by law, but provision was not made by Defendants to pay Plaintiff at the rate of 1½ times the regular rate for the hours worked in excess of the maximum hours provided by law.

76. Defendants’ non-payment of overtime pay to Plaintiff was willful.

77. For willfully violating NYLL § 170 and 12 NYCRR § 142-2.2, Defendants are liable for the unpaid overtime, liquidated damages and prejudgment interest detailed below in the damages section of the Complaint.

78. Defendants, for their willful violations of New York law, are liable for liquidated damages equal to 100% of the due and unpaid overtime from April 9, 2011 onward.

79. From on or about July 2014 through July 28, 2016, plaintiff was employed virtually around-the-clock except for a three-week period (9/11/15 – 10/1/15) during which she was in Colombia when her husband died. She worked an average of 18 hours per day, seven days per week, for a total of 126 hours per week. However, Plaintiff was not paid for any overtime (i.e., for hours worked above 44 hours per week). Similarly, Plaintiff was not paid at an overtime rate in lieu of receiving one day of rest per week in violation of New York's Domestic Workers' Bill of Rights.

80. Plaintiff is entitled to compensation for time worked in excess of 40 hours per week during her First Three Months of employment and for time worked in excess of 44 hours per week for the remainder of her employment.

81. Based upon the foregoing, Defendants are liable for the unpaid overtime and liquidated damages set forth in the Damages section of the Complaint below.

### THIRD CAUSE OF ACTION

#### UNPAID SPREAD OF HOURS PAY IN VIOLATION OF NEW YORK LAW

82. Plaintiff incorporates the preceding paragraphs by reference.

83. Defendants failed to pay Plaintiff one (1) additional hour pay at the basic minimum wage rate before allowances for each day Plaintiff's spread of hours exceeded ten (10),

in violation of New York Labor Law §§ 190, et seq. & 650, et seq., as codified by 12 NYCRR §§ 137.17 & 137.11.

84. Defendants' failed to pay Plaintiff in a timely fashion, as required by Article 6 of the New York Labor Law.

85. Defendants' failure to pay Plaintiff an additional hour pay for each day Plaintiff's spread of hours exceeded ten (10) hours and Defendants' failure to pay in a timely fashion was willful within the meaning of New York Labor Law § 663.

86. As a result of the foregoing, Plaintiff has been injured, and Defendants have profited thereby, in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF NEW YORK LABOR LAW § 195**

87. Plaintiff incorporates the preceding paragraphs by reference.

88. NYLL § 195.1(a) provides, in pertinent part, that "Every employer shall":

provide his or her employees, in writing ..., ...on or before February first of each subsequent year of the employee's employment with the employer, a notice containing the following information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; \*\*\*

the regular pay day designated by the employer in accordance with section one hundred ninety- one of this article; the name of the employer; \*\*\*

Each time the employer provides such notice to an employee, the employer shall obtain from the employee a signed and dated written acknowledgement ... of receipt of this notice, which the employer shall preserve and maintain for six years. \*\*\*

For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the notice must state the regular hourly rate and overtime rate of pay[.]

89. NYLL § 195(3) provides, in pertinent part, that "Every employer shall":



furnish each employee with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; \*\*\*; and net wages. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the statement shall include the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked.

90. NYLL § 198 further provides, in pertinent part, as follows:

1-b. If any employee is not provided within ten business days of his or her first day of employment a notice as required by subdivision one of [Labor Law § 195.1], he or she may recover in a civil action damages of [\$50] for each work day that the violations occurred or continue to occur, but not to exceed a total of [\$5,000], together with costs and reasonable attorney's fees. \*\*\*

1-d. If any employee is not provided a statement or statements as required by [Labor Law § 195.3], he or she shall recover in a civil action damages of [\$250] for each work day that the violations occurred or continue to occur, but not to exceed a total of [\$5,000], together with costs and reasonable attorney's fees.\*\*\*

91. Defendants failed to comply with any of the various requirements set forth in NYLL § 195. As a result, their cumulative civil penalties would exceed the combined statutory maximum of \$10,000 under NYLL § 198 (1-b) and (1-d), and are therefore liable in the amount of \$10,000 to Plaintiff for said violations, plus attorney's fees and costs.

**FIFTH CAUSE OF ACTION**  
**NEW YORK STATE HUMAN RIGHTS LAW**  
**HOSTILE WORK ENVIRONMENT**

92. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs as if they were set in forth here in full.

93. Defendants substantially interfered with the employment of the Plaintiff and created an intimidating, hostile, and offensive work environment based on Plaintiff's ethnicity and national origin in violation of the New York Executive Law § 296 et seq.

94. As a direct and proximate result of Defendants' violations of New York State Human Rights Law, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to depression, humiliation, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which she is entitled to an award of monetary damages and other relief.

**SIXTH CAUSE OF ACTION**  
**NEW YORK STATE HUMAN RIGHTS LAW**  
**UNLAWFUL TERMINATION BASED ON DISABILITY AND REFUSAL TO**  
**ACCOMMODATE PLAINTIFF'S MEDICAL CONDITION**

95. Plaintiff repeats and re-alleges the allegations contained in the preceding paragraphs as if they were set forth here in full.

96. Defendants have willfully and intentionally discriminated against Plaintiff in violation of the New York State Human Rights Law by denying her equal terms and conditions of employment, including but not limited to, terminating her employment, despite the fact that at all times Plaintiff performed her duties in a professional and competent manner, because of her disability and/or because Defendants regarded her as disabled.

97. As a result of the foregoing acts of the Defendants, Plaintiff was discriminated against in violation of New York State Human Rights Law and said discrimination caused Plaintiff to suffer emotional distress.

98. As a proximate result of the Defendants' unlawful and discriminatory conduct in violation of the New York State Human Rights Law, Plaintiff has suffered and continues to suffer severe mental anguish and emotional distress, including but not limited to humiliation,

embarrassment, stress and anxiety, loss of self-esteem and self-confidence, and emotional pain and suffering for which she is entitled to an award of monetary damages and other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that she be awarded the following relief:

1. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States of America, the State of New York and the City of New York;

2. On the First, Second, Third, and Fourth causes of action:

- a. Judgment against Defendants for Plaintiff's unpaid back wages at the applicable overtime rate;
- b. An equal amount to the overtime wage damages as liquidated damages;
- c. Judgment against Defendants that their violations of the FLSA were willful;
- d. An award of statutory damages for Defendants' failure to provide Plaintiff with accurate wage statements pursuant to NYLL § 198(1-d);
- e. An award of statutory damages for Defendants' failure to provide Plaintiff with proper wage notices pursuant to NYLL § 198(1-b);
- f. Compensation for spread of hours pay plus liquidated damages;
- g. To the extent liquidated damages are not awarded, an award of prejudgment interest;
- h. All costs and attorneys' fees incurred prosecuting these claims; and
- i. For such further relief as the Court deems just and equitable.

3. On the Fifth and Sixth causes of action, compensation for severe mental anguish, depression, humiliation, embarrassment and emotional distress, and prejudgment interest on all amounts due.

JURY DEMAND

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

Dated: September 9, 2016

RAPAPORT LAW FIRM, PLLC

By: \_\_\_\_\_ /s/

Marc A. Rapaport  
Attorney for Plaintiff  
One Penn Plaza, Suite 2430  
New York, NY 10119  
Telephone: (212) 382-1600  
Facsimile: (212) 382-0920  
Email: [mrpaport@rapaportlaw.com](mailto:mrpaport@rapaportlaw.com)