

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

PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

--against--

SUMMONS 402586/09

EMC OF NEW YORK, INC. (a.k.a. EMC OF NEW
YORK CONTRACTING and EMC CONTRACTING,
INC.); FSC CONSTRUCTION, LLC; FSC GENERAL
CONSTRUCTION, LLC; BMC CONSTRUCTION
CONTRACTORS CORP.; EASTLAKE INDUSTRIES,
INC.; RIGID CONCRETE CONSTRUCTION CO.;
and MICHAEL MAHONEY,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York.

In the case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

NEW YORK
COUNTY CLERK'S OFFICE

OCT 15 2009

NOT COMPARED
WITH COPY FILE

Plaintiff designates New York County as the place of trial.

Dated: New York, New York
October 15, 2009

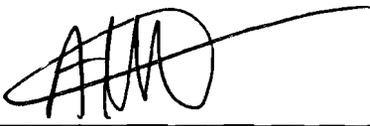
ANDREW M. CUOMO

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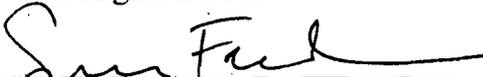
By: 

PATRICIA KAKALEC
Deputy Bureau Chief
Labor Bureau

MINA KIM
Assistant Attorney General
Labor Bureau

By: 

ALPHONSO B. DAVID
Bureau Chief
Civil Rights Bureau

By: 

SPENCER FREEDMAN
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Assistant Attorney General
Civil Rights Bureau

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

NEW YORK
COUNTY CLERK'S OFFICE

OCT 15 2009

PEOPLE OF THE STATE OF NEW YORK, by
ANDREW M. CUOMO, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

NOT COMPARED
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VERIFIED
COMPLAINT

Plaintiff,

-against-

EMC OF NEW YORK, INC. (a.k.a. EMC OF NEW
YORK CONTRACTING and EMC CONTRACTING,
INC.); FSC CONSTRUCTION, LLC; FSC GENERAL
CONSTRUCTION, LLC; BMC CONSTRUCTION
CONTRACTORS CORP.; EASTLAKE INDUSTRIES,
INC.; RIGID CONCRETE CONSTRUCTION CO.; and
MICHAEL MAHONEY,

Index No. 402586/09

Defendants.

The People of the State of New York, by and through their attorney, Andrew M. Cuomo,
Attorney General of the State of New York, as and for their complaint, allege as follows:

PRELIMINARY STATEMENT

1. This is an action to enjoin EMC of New York, Inc. (a.k.a. EMC of New York Contracting and EMC Contracting, Inc., or "EMC"); FSC Construction, LLC; FSC General Construction, LLC; BMC Construction Contractors Corp.; Eastlake Industries, Inc.; Rigid Concrete Construction Co.; and Michael Mahoney (collectively referred to as "Defendants") from violating state and federal labor laws and from discriminating against employees based on their race, color, and national origin. Plaintiff also seeks restitution, damages and penalties, as well as declaratory relief.

2. The Office of the New York Attorney General ("Attorney General") received many complaints from current and former employees of Defendants - construction companies

which do substantial business within the metropolitan New York area. The Attorney General conducted an investigation into the allegations that Defendants had failed to pay overtime, and found that Defendants willfully violated and continue to violate New York Labor Law and the Fair Labor Standard Act (“FLSA”) in several respects, including by failing to pay employees proper wages and overtime pay. The Attorney General also substantiated the complaints from employees who indicated that they were subject to differences in wages, benefits, hiring, and advancement on the basis of race and national origin.

3. Defendants’ employees—mostly carpenters and laborers—worked six (6) or seven (7) days each week at construction sites in the New York City area. They almost always worked well over forty (40) hours per week, up to fifty (50) or sixty (60) hours per week, but only received their regular rate of pay for all hours instead of receiving an overtime rate for their overtime hours. Defendants attempted to hide their labor law violations and confuse employees by, among other things, paying employees with multiple checks issued from different accounts, not providing pay stubs, and not properly recording employees’ hours. One of the consequences of these schemes was the failure to fully compensate employees for their overtime hours. This willful violation, among others, of New York Labor Law and the FLSA has resulted in employees being shortchanged by thousands of dollars every week, totaling millions of dollars in underpayments.

4. In addition, Defendants engaged in and continue to engage in intentional race, color, and national origin discrimination against African-American, Brazilian, and Latino employees in violation of the New York State Human Rights Law, Executive Law § 296 et seq.; New York City Human Rights Law, New York City Human Rights Law, Administrative

Code 8-107; and New York State Civil Rights Law § 40-c (“New York Civil Rights Law”), by treating employees in materially disparate ways based on their race and national origin.

Defendants offered White Irish employees wages, benefits, and advancement opportunities denied to African-American, Brazilian, and Latino employees who performed substantially the same work. In addition, Defendants predominantly hired White Irish workers to higher-paying positions and hired African-American, Brazilian, and Latino employees to lower-paying positions without regard to individual qualifications.

5. The corporations named in this lawsuit are all under the control of Michael Mahoney, the president of several of the companies. The Defendants attempt to obscure the management of each Defendant by creating multiple corporations in different states with different addresses, but Michael Mahoney exercises control over the operations of each Defendant. Defendants control and share the same employees, as well as work together in each other’s interests to increase their profits by failing to pay overtime wages to dozens of employees.

6. The labor law violations and discriminatory treatment at issue have harmed and will continue to harm a substantial segment of the population, namely all the individuals who have been employed, are currently employed, or will be employed by Defendants. With this action, the Attorney General seeks a declaration that Defendants violated New York’s labor and civil rights laws and permanently enjoin Defendants, their employees, agents and successors from continued violation of law. Further, the Attorney General seeks an order awarding restitution to employees for unpaid overtime, spread shift, or other wages, as well as liquidated damages, and requiring Defendants to implement policies and procedures sufficient to prevent

unlawful discriminatory practices in the future.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to New York Executive Law § 63(12), which authorizes the Attorney General to seek injunctive relief, restitution, and damages against any person that engages in repeated fraud or illegality in the conduct of business.

8. The Court also has jurisdiction over this action pursuant to its general jurisdiction under the New York Constitution, Art. VI, § 7.

9. Venue is proper in this county pursuant to New York CPLR § 503(a) because the Attorney General maintains an office in New York County.

PARTIES

10. Plaintiff, the People of the State of New York, is represented by its chief legal officer, Andrew M. Cuomo, Attorney General of the State of New York, who brings this action pursuant to the authority granted him under New York Executive Law § 63(1) and (12) and New York State Human Rights Law, Executive Law § 296 et seq.

11. Defendants EMC of New York, Inc. (a.k.a. EMC of New York Contracting and EMC Contracting, Inc.), FSC Construction LLC, FSC General Construction LLC, BMC Construction Contractors Corp., Eastlake Industries, Inc., and Rigid Concrete Construction Co. (“Defendant companies”) are construction companies that have operated under different corporate names and have had numerous office locations, including but not limited to: (1) 4 Brown Drive, Pearl River, New York, 10965; (2) 22 South Main Street, Pearl River, New York 10965; (3) 440 West 41st Street, New York, New York 10036; (4) 74 Academy Street,

Belleville, New Jersey 07109; (5) 407 Street Drive, Paramus, New Jersey 07652; (6) P.O. Box 1627, Paramus, New Jersey, 07653; (7) 15 Lakeshore Drive, Eastchester, New York 10709; (8) 36 Mill Plain Road, Suite 301, Danbury, Connecticut 06801; and (9) 225 Millwood Road, Chappaqua, New York 10514.

12. Defendant Michael Mahoney is the president, chief executive officer, or other corporate officer of all the corporations listed in the caption. He is the CEO and President EMC of New York Inc., organizer of FSC General Construction LLC, and president of FSC Construction LLC. Employees working at the project sites of all the Defendant companies understood Michael Mahoney to be the owner of the Defendant companies they were working for at the time.

13. Defendants have performed and continue to perform construction work on various buildings, such as hotels and residential buildings, throughout Manhattan and Brooklyn, New York since about 2002. They employ carpenters and laborers to perform their construction projects, which consist of building formwork, and pouring and working with concrete, among other tasks.

14. Defendants have worked on at least ten construction sites throughout Manhattan and Brooklyn.

15. Defendants have employed approximately twenty to forty workers at each construction site.

16. The individuals who complained and other employees similarly situated were “employees” of Defendants within the meaning of the FLSA and New York Labor Law (hereinafter collectively referred to as “employees”).

17. Defendants “employed” the employees within the meaning of the FLSA and New York Labor Law.

18. Defendants operate an enterprise whose employees handle or work on goods or materials that has been moved in or produced for commerce, and Defendants generate more than \$500,000 in revenue per year.

19. Defendants share employees’ services and share control of the employees. For example, certain Defendants used payroll services to compensate employees for work performed by those employees for other Defendants.

20. There is common ownership and management of the Defendants. Michael Mahoney is the president, chief executive officer, or other corporate officer of all the corporate Defendants. Employees understood Michael Mahoney to be the owner of the various Defendant corporations that paid them and/or for which they performed work. In addition, many of the same foremen and supervisors were present at the different sites operated by Defendants.

21. Michael Mahoney assigned foremen as his agents to oversee employees at each site.

22. Michael Mahoney actively manages, supervises, and directs the business and operations of the corporate Defendants, either directly or through agents.

23. Michael Mahoney exercises operational control over significant aspects of the day-to-day functions of the corporate Defendants, either directly or through agents.

24. Michael Mahoney has the power to hire and fire employees, either directly or through agents.

25. Michael Mahoney determines the salary to be paid to employees, either directly or through agents.

26. Mahoney has the power to establish, and did establish, the terms of the employees' employment, either directly or through agents.

FACTUAL ALLEGATIONS

27. The following factual allegations apply to all relevant times unless otherwise indicated.

Attorney General's Investigation

28. The Attorney General's Office received complaints from employees of Defendants alleging labor and civil rights violations including rampant failure to pay required wages to employees and discrimination against racial minority employees in various terms and conditions of employment.

29. The Attorney General commenced an investigation by issuing a subpoena duces tecum and subpoena ad testificandum requesting documents and testimony relating to, among other things, payroll records, employee timesheets, documents identifying employee names and dates of employment, personnel policies, and complaints of discrimination.

30. The documents showed that Defendants failed to pay employees the overtime rate of one and a half of their regular hourly rate during weeks in which they worked more than 40 hours, and that Defendants assigned White Irish workers to predominantly higher-paying positions and assigned African-American, Brazilian, and Latino employees to lower-paying positions without regard to individual qualifications. Additionally, White Irish workers often received higher compensation for carpentry work than similarly situated African-American,

Brazilian, and Latino employees.

31. Further, the Attorney General conducted an investigatory hearing at which Michael Mahoney appeared with an attorney and refused to answer any questions, instead invoking the Fifth Amendment to almost every question. Pursuant to well-established case law, Michael Mahoney's invocation of the Fifth Amendment throughout the entire investigatory hearing in this civil investigation gives rise to an inference of liability.

32. Michael Mahoney invoked the Fifth Amendment when asked whether it was true that he failed to pay workers overtime wages.

33. He also invoked the Fifth Amendment when asked whether it was true that he failed to maintain records of employees' hours, gross wages, deductions, names, and addresses.

34. Michael Mahoney invoked the Fifth Amendment when asked whether it was true that he paid White Irish employees higher wages based on their race and national origin than Latino or African-American workers.

35. He also invoked the Fifth Amendment when asked whether it was true that White Irish employees were more likely to receive pay increases than Latino and African-American workers because of their race and national origin.

36. He also invoked the Fifth Amendment when asked whether it was true that only White Irish employees were hired or promoted to supervise work sites.

37. He also invoked the Fifth Amendment when asked whether it was true that White Irish workers were given additional benefits like sick leave and vacation days that were not given to African-American or Latino workers.

New York Labor Law and FLSA Violations

38. The employees frequently worked six days per week at rates starting at about \$15 per hour. They worked more than forty hours per week, often up to at least fifty or sixty hours per week.

39. For the vast majority of time relevant to this instant action, the employees were not paid overtime at a rate of one and a half of their regular hourly rate during weeks in which they worked more than forty hours.

40. Accounting for the hours worked by the employees, some employees were underpaid by at least \$600 per month in overtime wages.

41. In addition, many employees worked shifts that spread over more than ten hours per day but did not receive an extra hour of wages at the basic minimum hourly rate (“spread shift pay”), in willful violation of Section 142-2.4 of Title 12, Chapter 2 of the New York Code, Rules and Regulations (“NYCRR”).

42. The employees were supposed to be paid weekly but often received their checks late or received checks that were issued from accounts with insufficient funds (the checks “bounced”) when they tried to deposit them.

43. Some employees have still not received the compensation due to them from bounced checks.

44. Defendants did not maintain proper employment records, such as documents containing information regarding employees’ hours, rate of pay, gross and net wages, among other things.

45. Defendants’ failure to pay the employees as required by the FLSA and New

York Labor Law was willful.

Violations of Anti-Discrimination Laws

46. The Attorney General also received complaints from employees who indicated that they were subject to differences in wages, benefits, hiring, and advancement on the basis of race and national origin.

47. The Defendants' employees were primarily White Irish, African-American, Brazilian (non-Latino), and Latino.

48. Defendants did not generally examine candidate credentials or qualifications prior to hire, instead defendants relied on the candidate's race, national origin, or color to determine the candidate's wage and job position.

49. Defendants often excluded workers on the basis of race and national origin from some positions, so that certain higher paying jobs were generally held only by White Irish workers.

50. Specifically, supervisory positions were predominantly held by White Irish employees while laborer positions were held only by African-American, Brazilian, and Latino employees.

51. Some employees were denied advancement opportunities and promotions on the basis of their race and national origin.

52. In addition, even when employees performed the same type of work, Defendants paid White Irish employees at a higher wage rate than what they paid to African-American, Brazilian, and Latino employees. On average, White Irish employees were paid an hourly rate of approximately \$25.00, African-American employees were paid an hourly rate of

approximately \$18.00, Brazilian employees were paid an hourly rate of approximately \$15.00, and Latino employees were paid an average hourly rate of approximately \$15.00.

53. The discriminatory employment practices alleged above were intentional.

54. All the Defendants undertook all the actions and omissions alleged above either directly or through their agents who were authorized to undertake such actions and omissions.

55. Defendants act directly or indirectly in the interest of the other Defendants in relation to the employees. For example, none of the Defendants paid overtime wages as different payment practices would have caused competition among the Defendants.

56. The investigation also revealed that Michael Mahoney is personally liable for the unlawful conduct alleged above.

FIRST CAUSE OF ACTION:
VIOLATIONS OF THE NEW YORK LABOR LAW

57. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 56 as if fully set forth herein.

58. Defendants failed to pay employees overtime wages in violation of 12 NYCRR § 142-2.2.

59. Employees did not always receive their wages within seven calendar days of the end of the week in which their wages were earned, in violation of New York Labor Law § 191.

60. Defendants failed to pay employees an extra hour of pay at the basic minimum hourly wage rate for each day when an employee's shifts exceeded 10 hours, in violation of 12 NYCRR § 142-2.4.

61. Defendants failed to maintain proper employment records as required by 12

NYCRR § 142-2.6 and New York Labor Law §§ 661 and 195(4).

62. Defendants' failure to pay the required wages as set forth above was willful within the meaning of New York Labor Law §§ 198, 663 and 681.

63. Employees are entitled to the unpaid wages required by New York Labor Law, as well as 25% in liquidated damages as a consequence of Defendants' willful actions.

SECOND CAUSE OF ACTION:
VIOLATIONS OF THE FAIR LABOR STANDARDS ACT

64. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 63 as if fully set forth herein.

65. Defendants willfully failed to pay overtime wages to their employees, in violation of FLSA, 29 U.S.C. § 207 et seq. and its implementing regulations.

66. Defendants also violated FLSA, 29 U.S.C. § 211(c) by failing to keep required records.

67. The employees are entitled to their unpaid wages, an additional equal amount in liquidated damages, as well as court costs and fees, as a consequence of Defendants' unlawful actions and omissions, in accordance with 29 U.S.C. § 216(b).

THIRD CAUSE OF ACTION:
VIOLATIONS OF NEW YORK STATE HUMAN RIGHTS LAW

68. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 67 as if fully set forth herein.

69. New York State Human Rights Law, Executive Law § 296(1)(a) prohibits employers from discriminating in the terms, conditions, and privileges of employment on the basis of race, color, and national origin.

70. By the acts and practices described above, including paying similarly situated workers different salaries and providing them with different terms and conditions based on race, color, and national origin, Defendants engaged in discrimination in violation of New York State Human Rights Law.

FOURTH CAUSE OF ACTION:
VIOLATIONS OF NEW YORK CITY HUMAN RIGHTS LAW

71. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 70 as if fully set forth herein.

72. New York City Human Rights Law, Administrative Code 8-107 prohibits employers from discriminating in the terms, conditions, and privileges of employment on the basis of race, color, and national origin.

73. By the acts and practices described above, including paying similarly situated workers different salaries and providing them with different terms and conditions based on race, color, and national origin, Defendants engaged in discrimination in violation of New York City Human Rights Law.

FIFTH CAUSE OF ACTION:
VIOLATIONS OF NEW YORK STATE CIVIL RIGHTS LAW

74. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 73 as if fully set forth herein.

75. New York State Civil Rights Law § 40-c prohibits individuals within the jurisdiction of New York State from being discriminated against in their civil rights on the basis of race, color, or national origin.

76. By the acts and practices described above, Defendants engaged in discrimination

in violation of New York State Civil Rights Law.

SIXTH CAUSE OF ACTION:
VIOLATIONS OF THE NEW YORK EXECUTIVE LAW § 63(12)

77. Plaintiff realleges and incorporates by references the allegations set forth in paragraphs 1 through 76 as if fully set forth herein.

78. Defendants, by their violations of the laws referenced above, have engaged in repeated and persistent illegal acts in the carrying on of a business, in violation of New York Executive Law § 63(12).

79. Due to Defendants' violations of New York Executive Law § 63(12), Plaintiff is entitled to restitution, damages and injunctive relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) Declare that Defendants violated New York Executive Law, New York Labor Law, FLSA, New York State Human Rights Law, New York City Human Rights Law, and New York State Civil Rights Law;
- b) Permanently enjoin Defendants, their employees, agents and successors, and all other persons in active concert or participation with Defendants from violating New York Executive Law, New York Labor Law, FLSA, New York State Human Rights Law, New York City Human Rights Law, New York State Civil Rights Law;
- c) Order Defendants, and any and all subsidiaries, or successors-in-interest, to pay restitution for unpaid overtime, spread shift, or other wages, as well as liquidated

damages provided for by statute;

- d) Award employees pre-judgment and post-judgment interest as allowed by law;
- e) Order Defendants to implement policies and procedures sufficient to prevent unlawful discriminatory practices in the future;
- f) Award appropriate compensatory and punitive damages to employees harmed by their civil and human rights violations;
- g) Award costs, reasonable attorneys' fees and such other relief as this Court may deem just and proper;
- h) Retain jurisdiction to ensure compliance with the Court's Order; and
- i) Award such other and further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

JURY DEMAND

Plaintiff hereby demands a jury trial.

Dated: New York, New York
October 15, 2009

ANDREW M. CUOMO
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New York, New York 10271
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PATRICIA KAKALEC
Deputy Bureau Chief
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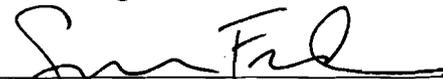
MINA KIM
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Bureau Chief
Civil Rights Bureau

By:



SPENCER FREEDMAN
Counsel for Civil Rights
Civil Rights Bureau

SANDRA ABELES
Assistant Attorney General
Civil Rights Bureau

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

PATRICIA KAKALEC, being duly sworn, deposes and says:

I am the Deputy Bureau Chief in the office of Andrew M. Cuomo, Attorney General of the State of New York, and am duly authorized to make this verification.

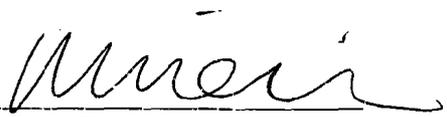
I have read the foregoing complaint and know the contents thereof, which are to my knowledge true, except as to those matters stated to be alleged on information and belief, and to these matters I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by plaintiff is that plaintiff is a body politic and the Attorney General is its duly authorized representative.



Patricia Kakalec

Sworn to before me this
15th day of October, 2009



Mina Kim
Assistant Attorney General