

STATE OF CONNECTICUT

RETURN DATE: APRIL 16, 2019	:	SUPERIOR COURT
	:	
MEHDI BELGADA, HORMOZ	:	JUDICIAL DISTRICT
AKHUNDZADEH, and DANIEL	:	OF NEW HAVEN
DZIEKAN, individually and on behalf	:	
of all other similarly situated individuals	:	
Plaintiffs	:	
v.	:	AT NEW HAVEN
	:	
HY'S LIVERY SERVICE, INC.,	:	
ROBERT LEVINE AND MATTHEW	:	
LEVINE	:	
Defendants	:	MARCH 13, 2019

CLASS ACTION COMPLAINT FOR UNPAID WAGES

I. INTRODUCTION

1. Connecticut employers must compensate their employees for all hours worked including "all time during which an employee is required ... to be on duty, ..., and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work.

C.G.S. Sec. 31-76b.

2. Employers must also pay their employees in accordance with the terms of the agreements they have struck. "[T]he formula by which an employee's wage is calculated is determined by the agreement between the employer and the employee." *Mytych v. May Department Stores Co.*, 260 Conn. 152, 160 (2002) (holding employee to the specific commission agreement with employer).

3. Defendants, Hy's Livery Service, Inc. and its owners, agreed with their Chauffeurs in writing on December 30, 2015, that beginning January 3, 2016, "all chauffeurs will be given a 1 hour, unpaid meal break every day, while on the road at a time decided by dispatch, pursuant to

the US Department of Labor, Code of Federal Regulations, regulation #785.19.” Defendants required that each Chauffeur “print and sign below that you received and understand this memo.” (Attached as Exhibit A.)

4. That written agreement specifically incorporated by reference the language of federal regulation 29 C.F.R. Section 785.19 as an explicit condition of the agreement, stating that “[t]he employee must be **completely relieved from duty** for the purposes of eating regular meals. ... The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating.” (emphasis added) (Attached as Exhibit B).

5. Defendants then almost immediately violated this agreement as to all of their Chauffeurs going forward. Defendants did not have their dispatchers inform their Chauffeurs when they should take their meal breaks and did not have them completely relieve the Chauffeurs of their duties. Instead Defendants required them to remain by their vehicles throughout the day, indicating in their Handbook that “[l]eaving a company vehicle unattended for any reason other than the occasion of performing an ‘airport pickup’” is a violation of company rules which can result in discipline. Further, Defendants held their Chauffeurs financially responsible for any damage to those limousines while they were in their care. These restrictions were imposed to protect Defendants’ limousines from damage and to protect Defendants from financial loss.

6. Defendants then failed to pay their Chauffeurs for all hours worked and instead took an hour of pay from their Chauffeurs’ wages several times each week. Further, Defendant never

recorded the actual start and stop times that they claim their Chauffeurs allegedly took *bona fide* meal breaks.

7. Defendants, as more fully described below, used Plaintiffs and the putative class as a free source of labor, forcing them to serve as *de facto* security guards for their limousines, and holding them financially responsible for any damage to their limousines resulting while those vehicles were in their care. They then unlawfully deducted hundreds of thousands of dollars of wages and overtime from their pay in the form of “meal breaks” when in fact they had no legal right to do so. Accordingly, Defendants are jointly and severally liable to Plaintiffs and the class for back wages, penalty damages, interest, attorneys’ fees and costs.

II. PARTIES

8. Plaintiff Mehdi Belgada (“Belgada”) is an individual residing in Milford, Connecticut. From May 6, 2015 to February 26, 2018, Belgada worked as a Chauffeur for the Defendants.

9. Plaintiff Hormoz Akhundzada (“Akhundzada”) is an individual residing in Bridgeport, Connecticut. From July 2, 2015 to the present, Akhundzada worked as a Chauffeur for the Defendants.

10. Plaintiff Daniel Dziekan (“Dziekan”) is an individual residing in Milford, Connecticut. From February 11, 2011 to the present, Dziekan worked as a Chauffeur for the Defendants. (Belgada, Akhundzada, and Dziekan collectively are referred to as the “Plaintiffs”).

11. Defendant Hy’s Livery Services, Inc. (“Hy’s”), is a Connecticut corporation with a principal place of business located at 480 Island Lane, West Haven, Connecticut. At all times relevant to this Complaint, Hy’s was the employer of Plaintiffs and all other similarly situated individuals, as that term is defined in CWA.

12. Defendant Robert Levine ("R. Levine") is the President of Hy's and has an 80% ownership interest in Hy's.
13. At all times relevant to this Complaint, R. Levine had the ultimate authority to set the hours of employment, maintain employment records, to direct the work and to determine the rate and method of payment of wages of Plaintiffs and all other similarly situated individuals.
14. In addition, R. Levine has unity of interest with Hy's based upon his ownership and his control over Hy's.
15. Defendant Matthew Levine ("M. Levine") is the Vice President of Hy's, and has a 10% ownership interest in Hy's.
16. R. Levine hired M. Levine, his son, and made the decision to appoint him to the position of Vice President of Hy's.
17. At all times relevant to this Complaint, R. Levine has had ultimate authority to issue directives to M. Levine and terminate his position at Hy's at any time.
18. At all times relevant to this Complaint, M. Levine had the authority to set the hours of employment, maintain employment records, to direct the work and to determine the rate and method of payment of wages of Plaintiffs and all other similarly situated individuals.
19. M. Levine's exercise of that authority was the direct cause of Hy's failure to pay wages as set forth below.
20. Accordingly, M. Levine and R. Levine were the employers of Plaintiffs and all other similarly situated individuals as that term is defined in the CWA.

III. LEGAL PRINCIPLES

21. Under the Connecticut Wage Act employers must pay their employees for all hours worked. "Hours worked" include all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work." C.G.S. Sec. 31-76b.

22. Employers who require their employees to eat their lunch at their desks, at their machines or at a work site have not relieved those employees of their duties sufficiently to avoid paying them for their meal breaks. 29 C.F.R. Section 785.19; *Reich v. S. New Eng. Telecomms. Corp.*, 121 F.3d 58 (2d Cir. 1997) (interpreting the similar federal Fair Labor Standards Act).

23. An employer must "advise his employees in writing, at the time of hiring, of the rate of remuneration, hours of employment and wage payments schedules, and (...) make available to his employees, any employment practices and policies or change therein with regard to wages (...) and comparable matters." C.G.S. § 31-71f.

24. Connecticut employers must compensate their employees in accordance with the terms of the compensation agreements they have struck. "[T]he formula by which an employee's wage is calculated is determined by the agreement between the employer and the employee." *Mytych v. May Department Stores Co.*, 260 Conn. 152, 160 (2002) (holding employee to the specific commission agreement with employer).

25. It is a basic principle of contract law that parties to a contract may incorporate into their agreement the terms and conditions of another document by reference, so that the two will be

interpreted together as the agreement of the parties. *Randolph Construction Co. v. Kings East Corporation*, 165 Conn. 269, 275, 334 A.2d 464 (1973); *Batter Building Materials Co. v. Kirschner*, 142 Conn. 1, 7, 110 A.2d 464 (1954); 3 Corbin, Contracts § 549; 4 Williston, Contracts (3d Ed. Jaeger), p. 135, § 581.

26. “Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.” *24 Leggett St. Ltd. Pshp. v. Beacon Indus.*, 239 Conn. 284, 295 (1996).

27. Employers must maintain true and accurate records of the hours their employees work. Conn. Gen. Stat § 31-66; Regs., Conn. State Agencies § 31-60-12.

28. Employers who fail to pay wages due to their employees are liable for twice the amount of wages due, and attorneys’ fees and costs. Employers can avoid penalty damages by showing that their violation was made in good faith. C.G.S. § 31-68, 31-72.

III. FACTS AND PROCEDURAL HISTORY

29. Defendant Hy’s is a Connecticut corporation providing “airport limo service to all airports in New England, Nationwide and Worldwide ...” www.hyslimo.com/services/airport-limo-service/

30. Hy’s has employed Chauffeurs throughout its existence to pick up and transport its clients to New York area airports.

31. Hy’s pays its Chauffeurs on an hourly basis, usually \$11 per hour, and tracks the beginning and end of their workdays through an application on their Chauffeurs’ phones.

32. Hy's requires its Chauffeurs to report to work, clock in, pick up a limousine, inspect it, make sure it is fully fueled and stocked and then drive to pick up its clients and deliver them to the airport.

33. At the end of the day, Hy's requires its Chauffeurs to return to the premises, drop off the vehicle and clock out.

34. On or about December 30, 2015, Defendants implemented a new meal break policy for their Chauffeurs, stating as follows:

As of the pay period beginning January 3, 2016, all Chauffeurs will be given a 1 hour, unpaid meal break every day, while on the road at a time decided by dispatch, pursuant to the U.S. Dept. of Labor, Code of Federal Regulations, regulation #785.19. If for any reason, due to scheduling or length of shift, you did not get that break, and it was deducted, please let me know and it will be adjusted. Also, if you have questions, please come and see me. Please print and sign below that you received and understand this memo. (Exhibit A, emphasis added.)

35. C.F.R. § 785.19 states:

Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. **The employee must be completely relieved from duty for the purposes of eating regular meals.** Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. **The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.** For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Exhibit B, emphasis added.)

36. Accordingly, Defendants, who required their Chauffeurs to sign the 12/30/15 Memo and collected the signatures, agreed to pay their Chauffeurs wages for their work when they were not "completely relieved from duty for the purpose of eating regular meals."

37. Defendants told their Chauffeurs in their Company Handbook that “[l]eaving a company vehicle unattended for any reason other than the occasion of performing an ‘airport pickup’” is a violation of their rules which can result in discipline.

38. Further, Defendants informed their Chauffeurs that they would be financially responsible for any damage to those limousines while they were in their care, stating as follows:

You are hereby notified that any employee who starts his work day with a company vehicle and returns the vehicle with any damage that was not reported prior to starting his work day, is responsible for reimbursing the company, Hy’s livery service, Inc./HLS Executive Coach, the deductible amount on the company insurance policy, which is \$1,500.00 at the present time, for any damages caused in each occurrence that the employee has. (Attached hereto as “Exhibit C”, emphasis added.)

39. These restrictions were imposed to protect Defendants’ limousines from damage and to protect Defendants from financial loss.

40. Defendants thus prevented their Chauffeurs from taking *bona fide* meal breaks and benefitted by having their business needs met through the unpaid work of their Chauffeurs.

41. Defendants frequently deducted approximately one hour from the pay of each of their Chauffeurs during their work days assuming after looking at their daily schedule that they had taken an uninterrupted one-hour meal break between assignments.

42. For example, on the week ending March 5, 2016, Defendants deducted five hours of overtime pay from the paycheck of Mehdi Belgada (regular pay rate of \$10.00 per hour), amounting to \$75.00.

43. As a further example, on the week ending March 11, 2017, Defendants deducted six hours of overtime pay from the paycheck of Hormoz Akhundzadeh (regular pay rate of \$10.50 per hour), amounting to \$94.50.

44. As a further example, on the week ending October 14, 2017, Defendants deducted four hours of overtime from the paycheck of Daniel Dzieken (regular pay rate of \$10.75 per hour), amounting to \$64.50.

45. In fact, during the times that Defendants docked the Chauffeurs as described, they were forbidden from leaving their vehicles unattended and were held financially responsible for any damage that may have resulted while the vehicles were in their care. Thus, they were not completely relieved of duties, their breaks were not bona fide, and they should have been paid for that time.

46. Defendants usually scheduled their Chauffeurs for twelve (12) hour days – sixty to seventy-two (60 - 72) hour weeks - but their mealtime hours were improperly deducted, and in addition, they were not paid overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours over 40 per week, as required by the CWA.

47. This claim was originally brought in Federal District Court along with parallel FLSA claims. Because of a recent opinion from the Second Circuit interpreting the federal taxi-cab exemption to overtime, the action was voluntarily dismissed by motion of the Plaintiffs for lack of federal jurisdiction without prejudice to refiling in state court. That court took no action on the pending state law claims. *Belgada, et al. v. Hy's Livery Service, Inc., et al*, 3:18-cv-00177 (VAB) [Doc. 121] (D. Conn, February 14, 2019).

VI. CLASS ACTION ALLEGATIONS

48. Plaintiffs sue on behalf of themselves and all other members of the Connecticut class, pursuant to Sections 9-7 and 9-8 of the Connecticut Practice Book.

49. The Connecticut Class is defined as follows:

All current and former employees of Defendants who were employed as
Chauffeurs at any time from January 31, 2016 through the date of final judgment.

50. Class certification for these Connecticut law claims is appropriate under Sections 9-7 and 9-8 of the Connecticut Practice Book because all the requirements of the Rules are met.

51. The class is so numerous that joinder of all members is impracticable. On information and belief, there are approximately three hundred (300) Chauffeurs employed by Defendants in Connecticut during relevant time period.

52. There are questions of law and fact common to the class, including whether the Defendants unlawfully failed to pay class members for their work time in violation of the agreements they made and / or Connecticut law, and whether Defendants' actions were taken in good faith sufficient to avoid penalty damages.

53. The claims of Plaintiffs are typical of those of the class members. The claims of Plaintiffs encompass the challenged practices and course of conduct of Defendants. Furthermore, the claims of Plaintiffs are based on the same legal theories as the claims of the putative class members. The legal issues as to the violation of the CWA by Defendants' conduct applies equally to Plaintiffs and to the class.

54. Plaintiffs will fairly and adequately protect the interests of the class. The claims of Plaintiffs are not antagonistic to those of the putative class and they have hired counsel skilled in the prosecution of class actions.

55. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action is the superior method of

adjudications because it presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

56. Based upon the foregoing, Defendants violated the CWA by automatically deducting an hour a day from their Chauffeurs' pay when in fact their Chauffeurs were not completely relieved of duty.

57. Accordingly, Plaintiffs, and all other members of the Connecticut Class are entitled to compensation, either at straight time for weeks in which they worked forty or less total hours, or overtime pay for all hours worked more than forty per week, as well as penalty damages, attorneys' fees, and court costs, pursuant to C.G.S. § 31-68, and 31-72.

DEMAND FOR RELIEF

WHEREFORE, the Plaintiffs claim on behalf of themselves and other similarly situated persons:

1. Certification of this action as a class action pursuant to Sections 9-7 and 9-8 of the Connecticut Practice Book on behalf of members of the Connecticut class and the appointment of Plaintiffs and their counsel to represent the class;
2. Unpaid wages in the form of straight time and overtime;
3. Penalty damages pursuant to C.G.S. § 31-68 and 31-72;
4. Attorneys' fees pursuant to C.G.S. § 31-68 and 31-72;
5. Interest pursuant to C.G.S. § 37-3a at the rate of 10% per annum;
6. Costs;
7. Trial by jury; and
8. Any and all other relief as the court deems just and proper.

Plaintiffs, individually and on behalf of all
other similarly situated individuals

By: 

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STATE OF CONNECTICUT

RETURN DATE:	APRIL 16, 2019	:	SUPERIOR COURT
		:	
MEHDI BELGADA, HORMOZ		:	JUDICIAL DISTRICT
AKHUNDZADEH, and DANIEL		:	OF NEW HAVEN
DZIEKAN, individually and on behalf		:	
of all other similarly situated individuals		:	
Plaintiffs		:	
v.		:	AT NEW HAVEN
		:	
HY'S LIVERY SERVICE, INC.,		:	
ROBERT LEVINE AND MATTHEW		:	
LEVINE		:	
Defendants		:	MARCH 13, 2019

STATEMENT OF AMOUNT IN DEMAND

WHEREFORE, the Plaintiff claims a cause of action seeking damages of not less than \$15,000.00, exclusive of interests and costs, which cause is within the jurisdiction of the Superior Court.

Plaintiffs, individually and on behalf of all
other similarly situated individuals

By: 
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Attorneys for Plaintiff

RETURN DATE: APRIL 16, 2019 : SUPERIOR COURT
MEHDI BELGADA, ET AL : JUDICIAL DISTRICT OF
NEW HAVEN
VS. : AT NEW HAVEN
HY'S LIVERY SERVICE, INC., ET AL : MARCH 14, 2019

RETURN OF SERVICE

STATE OF CONNECTICUT

SS: New Haven, Milford

COUNTY OF NEW HAVEN

STATE OF CONNECTICUT

SS: Fairfield

COUNTY OF FAIRFIELD

March 14, 2019

Then and there, and by virtue hereof, I made service of the within and foregoing original Writ, *Summons – Civil, Civil Summons Continuation of Parties, Class Action Complaint For Unpaid Wages, Demand for Relief and Statement of Amount in Demand*, by leaving a True and Attest Copy with and in the hands of Attorney James S. Brownstein, agent for service for the within named defendant, **Hy's Livery Service, Inc.**, at 195 Church Street, New Haven, CT, with my doings hereon endorsed.

Then and there, and by virtue hereof, I made service of the within and foregoing original Writ, *Summons – Civil, Civil Summons Continuation of Parties, Class Action Complaint For Unpaid Wages, Demand for Relief and Statement of Amount in Demand*, by leaving a True and Attest Copy with and in the hands of Attorney James S. Brownstein, who accepted service on behalf of his client, **Robert Levine**, at 195 Church Street, New Haven, CT, with my doings hereon endorsed.

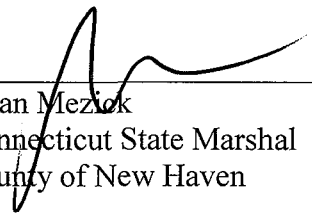
Then and there, and by virtue hereof, I made service of the within and foregoing original Writ, *Summons – Civil, Civil Summons Continuation of Parties, Class Action Complaint For Unpaid Wages, Demand for Relief and Statement of Amount in Demand*, by leaving a True and Attest Copy with and in the hands of Attorney James S. Brownstein, who accepted service on behalf of his client, **Matthew Levine**, at 195 Church Street, New Haven, CT, with my doings hereon endorsed.

March 23, 2019

Then and there, by virtue hereof and at the special direction of the plaintiff's attorney, I made service of the within and foregoing original Writ, *Summons – Civil, Civil Summons Continuation of Parties, Class Action Complaint For Unpaid Wages, Demand for Relief and Statement of Amount in Demand*, by leaving a True and Attest copy at 116 Beach Avenue, Milford, CT, the usual place of abode of **Robert Levine**, with my doings hereon endorsed.

Then and there, by virtue hereof and at the special direction of the plaintiff's attorney, I made service of the within and foregoing original Writ, *Summons – Civil, Civil Summons Continuation of Parties, Class Action Complaint For Unpaid Wages, Demand for Relief and Statement of Amount in Demand*, by leaving a True and Attest copy at 225 Whites Hill Lane, Fairfield, CT, the usual place of abode of **Matthew Levine**, with my doings hereon endorsed.

Attest


Brian Mezick
Connecticut State Marshal
County of New Haven

Service	\$ 120.00
Travel	\$ 40.00
Pages	\$ 75.00
Endorsements	<u>\$ 5.20</u>
	\$ 280.20