

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY
CAMDEN DIVISION**

**DON YOUNG individually, and on behalf of
all others similarly situated,**

Plaintiff,

vs.

**B & H FOTO & ELECTRONICS CORP
d/b/a B AND H PHOTO & ELECTRONICS
CORP,**

Defendant.

Docket No.:

COMPLAINT – CLASS ACTION

JURY TRIAL DEMANDED

COLLECTIVE AND CLASS ACTION COMPLAINT WITH JURY DEMAND

Plaintiff Don Young, individually and on behalf of all others similarly situated, by and through his attorneys BROWN, LLC, hereby files this Collective and Class Action Complaint against Defendant, B & H Foto & Electronics Corp d/b/a B and H Photo & Electronics Corp (hereinafter “B&H”), and states as follows:

INTRODUCTION

1. This is a collective and class action brought pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23 by Plaintiff, Don Young, individually and on behalf of all similarly situated persons employed by Defendant, B&H, arising from Defendant’s willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, New Jersey Wage and Hour Laws (“NJWHL”), N.J.S.A. 34:11-56a, *et seq.*, and the New Jersey Wage Payment Law (“NJWPL”), N.J.S.A. 34:11-4.1, *et seq.* (“New Jersey Wage Acts”).

2. Defendant B&H is a retailer that sells products including photo and video equipment through e-commerce means and a retail location in New York.

3. Plaintiff and the members of the putative class were employed by Defendant as hourly-paid, non-exempt warehouse workers, entitled to compensation for all compensable hours worked.

4. Defendant fails to pay hourly-paid, non-exempt warehouse workers for hours worked before they clock in, during which they are required to retrieve ID cards and retrieve and don personal protective equipment (“PPE”) including vests stored in outdoor lockers before walking into the facility and then into the warehouse, and after they clock out during which they are required to wait in line to pass through a metal detector and then walk out of the warehouse and outside to doff PPE including vests and store PPE and ID cards in outdoor lockers, amongst other things.

5. Defendant fails to compensate hourly-paid, non-exempt warehouse workers at 1.5 times their regular hourly rate for all hours worked in excess of 40 in a workweek. Instead Defendant compensates hourly-paid, non-exempt warehouse workers at their regular hourly rate, without any overtime premium for clocked-in hours up to forty-two (42) in a workweek, and only pays them an overtime premium of 1.5 times their regular rate of pay for clocked-in hours in excess of forty-two (42) in a workweek.

6. Defendant’s failure to pay hourly-paid, non-exempt warehouse workers for all hours worked violates the NJWPL, and in the weeks where such hours worked were in excess of forty (40), Defendant’s failure to pay for such hours also violates the NJWHL, under which Plaintiff and all others similarly situated are entitled to time-and-a-half (1.5) of their regular rate of pay for hours worked in excess of forty (40) in a workweek. Defendant’s failure to pay its employees for all hours worked and an overtime premium of time-and-a-half, where applicable, also violates the FLSA.

7. Plaintiff brings his FLSA claims (Count I) individually and on a collective basis pursuant to 29 U.S.C. § 216(b) on behalf of himself and *all other hourly-paid, non-exempt warehouse workers employed by Defendant in the United States or any other territorial region covered by the FLSA at any time within the three (3) years preceding the commencement of this action through the date of judgment* (the “FLSA Collective”), and seeks unpaid overtime pay, liquidated damages, fees and costs, and any other remedies to which they may be entitled.

8. Plaintiff brings his NJWHL and NJWPL claims (Counts II and III) individually and on a class basis pursuant to Fed R. Civ. P. 23 on behalf of himself and *all current and former hourly-paid warehouse workers who worked for Defendant in New Jersey at any time within the six (6) years preceding the commencement of this action and the date of judgment* (the “Rule 23 Class”), and seeks unpaid regular and overtime pay, liquidated damages, fees and costs, and any other remedies to which they may be entitled.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. § 1331).

10. The Court has personal jurisdiction over Defendant because Defendant conducts business within the state of New Jersey and employs individuals within the state of New Jersey, and because the claims and Plaintiff and the class members arise out of Defendant’s contacts with New Jersey.

11. The Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

12. Venue is proper under 28 U.S.C. § 1391(b) because Plaintiff’s cause of action arose, in part, in Florence, New Jersey.

PARTIES

13. Plaintiff Don Young is a resident of Elizabeth, New Jersey.

14. Plaintiff was employed by Defendant as a non-exempt, hourly paid sorter for Defendant at its warehouse in Florence, New Jersey from approximately May 2019 to August 2024.

15. Defendant B&H is a New York corporation whose principal address is 420 9th Avenue, New York, New York 10001.

16. Defendant B&H operates warehouse facilities in New Jersey.

FACTUAL ALLEGATIONS¹

17. Defendant operates warehouse facilities in New Jersey and a retail location in New York.

18. Defendant is an enterprise whose annual gross volume of sales made or business done exceeds \$500,000.

19. Defendant is an enterprise that has had employees engaged in commerce or in the production of goods for commerce, and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

20. Defendant employs non-exempt, hourly-paid warehouse workers who are individually engaged in commerce.

21. Defendant employs non-exempt, hourly-paid warehouse workers at its warehouses located in New Jersey.

¹ Unless otherwise specifically noted here, the following allegations all apply through the time periods covered by the FLSA Collective and the Rule 23 Class.

22. Defendant pays its non-exempt, hourly-paid warehouse workers on an hourly basis, as opposed to a salary basis.

23. Defendant suffers and permits non-exempt, hourly-paid warehouse workers to work full-time schedules that typically exceed forty (40) hours worked in a week.

24. Defendant requires hourly-paid warehouse workers to record their hours worked by clocking in and out in an electronic timekeeping system.

25. In addition to working during their scheduled hours, Defendant suffers and permits non-exempt, hourly-paid warehouse workers to perform compensable work before their shifts are scheduled to start and before they clock in, including retrieving ID cards and retrieving and donning PPE including vests stored in outdoor lockers before walking into the facility and then into the warehouse.

26. In addition to working their scheduled hours, Defendant suffers and permits non-exempt, hourly-paid warehouse workers to perform compensable work after their shifts are scheduled to end and after they clock out, including waiting in line to pass through a metal detector and then walking outside to doff PPE including vests and storing PPE and ID cards in outdoor lockers.

27. Defendant does not record or compensate the hours worked by hourly-paid warehouse workers before they clock in, including retrieving ID cards and retrieving and donning PPE stored in outdoor lockers and walking into the facility and then into the warehouse.

28. Defendant does not record or compensate the hours worked by hourly-paid warehouse workers after they clock out, including waiting in line to pass through a metal detector and walking from the warehouse to outdoor lockers to doff and store PPE and ID cards.

29. The pre-and-post shift work alleged herein typically occurs in excess of forty (40) hours in workweek.

30. As a result of Defendant's failure to pay hourly-paid warehouse workers for the work they perform before they clock in and after they clock out, they are regularly suffered and permitted to perform work in excess of forty (40) hours in a workweek for which they do not receive any compensation.

31. Defendant does not compensate hourly-paid warehouse workers at 1.5 times their regular hourly rate of pay for all hours worked in excess of forty (40) hours in a workweek, through its failure to compensate workers for hours worked before they clock in and after they clock out, and its failure to compensate workers for clocked-in hours in excess of 40 in a workweek at 1.5 times their regular hourly rate.

32. Defendant has an overtime payment scheme for hourly-paid warehouse workers wherein Defendant pays warehouse workers an overtime premium of 1.5 times their regular rate of pay for clocked-in hours worked in excess of forty-two (42) in a workweek.

33. However, Defendant pays warehouse workers at their regular rates of pay, without any overtime premium, for clocked-in hours worked up to forty-two (42) hours in a workweek.

34. Accordingly, in many weeks Defendant fails to pay warehouse workers an overtime premium of 1.5 times their regular rate of pay for clocked-in hours worked in excess of forty (40) and up to forty-two (42) in a workweek

35. Defendant knows, or alternatively, recklessly disregards the fact that non-exempt, hourly-paid warehouse workers perform work before they clock in, including retrieving ID cards and retrieving and donning PPE stored in outdoor lockers before walking into the facility and then into the warehouse, and after they clock out, including waiting in line to pass through a

metal detector and walking out of the warehouse and outside to doff PPE and store PPE and ID cards in outdoor lockers.

36. Defendant knows, or alternatively, recklessly disregards the fact that the work performed by non-exempt, hourly-paid warehouse workers is compensable under the FLSA, NJWHL, and NJWPL.

37. Defendant knows, or alternatively, recklessly disregards the fact that it does not compensate warehouse workers at 1.5 times their regular hourly rate of pay for hours worked in excess of forty (40) hours in a workweek.

38. Defendant knows, or alternatively, recklessly disregards the fact that non-exempt, hourly-paid warehouse workers are not compensated for the work performed before and after their shifts, as alleged herein.

39. Plaintiff typically worked over forty (40) hours per week during the time periods covered by the FLSA Collective and the Rule 23 Class.

40. In such weeks Defendant did not compensate Plaintiff at 1.5 times his regular hourly rate of pay for all clocked-in hours worked in excess of forty (40) in a workweek.

41. When Plaintiff worked over forty (40) hours per week Defendant compensated Plaintiff at his straight time rate, without any overtime premium for such clocked-in hours up to forty-two (42), and only compensated Plaintiff at 1.5 times his regular hourly rate of pay for clocked-in hours in excess of forty-two (42) in a workweek.

42. Plaintiff was scheduled to work from 8:00 am until 4:00 pm on Mondays through Thursdays and from 7:00 am until 3:00 pm on Fridays.

43. In most weeks Plaintiff was asked to work from 8:00 am until 6:00 pm on one day between Monday through Thursday, and Plaintiff worked that shift for one day during most weeks.

44. Plaintiff spent additional time working without compensation before he clocked in and before his scheduled shifts including retrieving an ID card and retrieving and donning PPE including a vest stored in an outdoor locker before walking into the facility and then into the warehouse.

45. Plaintiff spent additional time working without compensation after he clocked out and after his scheduled shifts including waiting in line to pass through a metal detector and then walking outside to doff PPE including a vest and storing PPE and an ID card in outdoor lockers.

46. Plaintiff regularly worked an extra shift on Sundays, in addition to his five (5) weekly shifts, during which he worked while clocked in from approximately 9:00 am until approximately 6:00 pm, and spent additional time working without compensation before he clocked in and before his Sunday shifts including retrieving an ID card and retrieving and donning PPE including a vest stored in an outdoor locker before walking into the facility and then into the warehouse, and he spent additional time working without compensation after he clocked out and after his Sunday shifts including waiting in line to pass through a metal detector and then walking outside to doff PPE including a vest and storing PPE and an ID card in outdoor lockers.

47. Defendant's violation of the FLSA, NJWHL, and NJWPL, as alleged herein, is knowing and willful.

COLLECTIVE ACTION ALLEGATIONS

48. Plaintiff repeats and re-alleges all preceding paragraphs of the Complaint inclusive, as if fully set forth herein.

49. Plaintiff brings his claim for relief for violation of the FLSA, both individually and as a collective action pursuant to Section 216(b) of the FLSA, 29 U.S.C. § 216(b). The proposed collective is defined as follows:

All hourly-paid, non-exempt warehouse workers employed by Defendant in the United States or any other territorial region covered by the FLSA at any time within the three (3) years preceding the commencement of this action through the date of judgment.

(the “FLSA Collective”).

50. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are “similarly situated” to Plaintiff under 29 U.S.C. § 216(b). The collective of employees on behalf of whom Plaintiff brings this collective action are similarly situated because: (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan (i.e. Defendant failing to pay hourly-paid warehouse workers for pre-and-post-shift work, and Defendant failing to pay hourly-paid warehouse workers at 1.5 times their regular hourly rate of pay for clocked-in hours in excess of forty (40) in a workweek as alleged herein); and (c) their claims are based upon the same factual and legal theories.

51. The employment relationships between Defendant and every FLSA Collective member are the same and differ only by name and rate of pay. The key issues—the amount of uncompensated time owed to each FLSA Collective member—do not vary substantially among the Collective members.

52. Plaintiff estimates the FLSA Collective, including both current and former employees over the relevant period, will include several hundred members. The precise number of FLSA Collective members should be readily available from a review of Defendant's personnel and payroll records.

CLASS ACTION ALLEGATIONS

53. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on his own behalf and on behalf of the Rule 23 Class, defined as:

All hourly-paid, non-exempt warehouse workers employed by Defendant in New Jersey at any time within the six (6) years preceding the commencement of this action and the date of judgment.

54. Plaintiff reserves the right to amend this definition as necessary.

55. The members of the Rule 23 Class are so numerous that joinder of all Rule 23 Class members in this case would be impractical. Rule 23 Class members should be easy to identify from Defendant's computer systems and electronic payroll and personnel records.

56. There is a well-defined community of interest among Rule 23 Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Class.

57. Plaintiff's claims are typical of those of the Rule 23 Class in that they and all other Rule 23 Class members suffered damages as a direct and proximate result of the Defendant's common and systemic payroll policies and practices. Plaintiff's claims arise from the same policies, practices, promises and course of conduct as all other Rule 23 Class members' claims and their legal theories are based on the same legal theories as all other Rule 23 Class members.

58. Plaintiff will fully and adequately protect the interests of the Rule 23 Class and they have retained counsel who are qualified and experienced in the prosecution of nationwide

wage and hour class actions. Neither Plaintiff nor his counsel has interests that are contrary to, or conflicting with, the interests of the Rule 23 Class.

59. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Class members to prosecute individual actions on their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer. Prosecution of this case as a Rule 23 Class action will also eliminate the possibility of duplicative lawsuits being filed in state and federal courts throughout the nation.

60. This case will be manageable as a Rule 23 Class action. Plaintiff and his counsel know of no unusual difficulties in this case and Defendant has advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

61. Because the elements of Rule 23 are satisfied in this case, class certification is appropriate.

62. Because Defendant acted and refused to act on grounds that apply generally to the Rule 23 Class and declaratory relief is appropriate in this case with respect to the Rule 23 Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

COUNT I
(Brought Individually and as a Class Action Under FLSA 29 U.S.C. § 207(a)(1))
VIOLATIONS OF FLSA – FAILURE TO PAY WAGES FOR ALL OVERTIME HOURS
WORKED

63. Plaintiff re-alleges and incorporates all previous paragraphs herein.

64. 29 U.S.C. § 207(a)(1) provides:

[N]o 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.

65. At all times relevant to this action, Defendant was an employer under 29 U.S.C. § 203(d) of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.*

66. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff and other members of the FLSA Collective to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

67. Plaintiff and other members of the FLSA Collective worked many workweeks in excess of 40 hours within the last three years.

68. Defendant failed to pay Plaintiff and other members of the FLSA Collective for all hours worked in excess of 40 in a workweek, as alleged herein.

69. Defendant knew or should have known that the Plaintiff and other members of the FLSA Collective were working hours in excess of 40 hours per week, without overtime compensation of one-and-one-half (1.5) their pay for hours worked in excess of 40 per week.

70. Defendant’s violations of the FLSA were knowing and willful. See 29 U.S.C. § 255(a) (“[A] cause of action arising out of a willful violation [of the FLSA] may be commenced within three years....”).

71. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or his unpaid wages (and unpaid overtime if applicable) plus an additional equal amount in liquidated damages (double damages), plus costs and reasonable attorneys’ fees.

COUNT II
(Brought Individually and as a Class Action Under Rule 23)

**VIOLATIONS OF NJWHL – FAILURE TO PAY WAGES FOR ALL OVERTIME
HOURS WORKED**

72. Plaintiff re-alleges and incorporates all previous paragraphs herein.

73. Defendant was an “employer” of Plaintiff and the other members of the Rule 23 Class within the meaning of N.J. Stat. § 34:11-56a1(g).

74. Plaintiff and the other members of the Rule 23 Class were “employees” of Defendant, within the meaning of N.J. Stat. § 34:11-56a1(h).

75. Defendant employed Plaintiff and the other members of the Rule 23 Class, within the meaning of N.J. Stat. § 34:11-56a1(f).

76. Defendant required Plaintiff and the other members of the Rule 23 Class to work over forty (40) hours in most weeks.

77. Defendant failed to pay Plaintiff and the other members of the Rule 23 Class for all hours worked in excess of 40 in a workweek, as alleged herein, and thus should have been paid at time-and-a-half (1.5) of their regular rates of pay, *see* N.J. Stat. Ann. § 34:11-56a4(b), but instead were not paid at all.

78. N.J. Stat. § 34:11-58 provides that as a remedy for a violation of N.J. Stat. Ann. § 34:11-56a4(b), an employee is entitled to his or her unpaid wages (and unpaid overtime if applicable) plus twice of this amount in liquidated damages (treble damages), plus costs and reasonable attorneys’ fees.

COUNT III
(Brought Individually and as a Class Action Under Rule 23)
**VIOLATIONS OF NJWPL – FAILURE TO PAY HOURLY WAGES FOR NON-
OVERTIME WORK**

79. Plaintiff re-alleges and incorporates all previous paragraphs herein.

80. Defendant was an “employer” of Plaintiff and the other members of the Rule 23 Class within the meaning of N.J. Stat. § 34:11-4.1(a).

81. Plaintiff and the other members of the Rule 23 Class were “employees” of Defendant, within the meaning of N.J. Stat. § 34:11-4.1(b).

82. The NJWPL requires an employer to “pay the full amount of wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer....” N.J. Stat. § 34:11-4.2.

83. The NJWPL prohibits an employer from “withhold[ing] or divert[ing] any portion of an employee's wage unless the employer is required or empowered to do so by New Jersey or United States law” or the wage is withheld pursuant to other exceptions not at issue here. N.J. Stat. Ann. § 34:11-4.4.

84. The statute defines “wages” as “direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.” N.J. Stat. Ann. § 34:11-4.1.

85. Defendant failed to pay Plaintiff and the other members of the Rule 23 Class wages for all hours worked, as alleged herein.

86. N.J. Stat. § 34:11-58 provides that as a remedy for a violation of N.J. Stat. Ann. § 34:11-56a4(b), an employee is entitled to his or her unpaid wages (and unpaid overtime if applicable) plus twice of this amount in liquidated damages (treble damages), plus costs and reasonable attorneys’ fees.

RELIEF REQUESTED

WHEREFORE, Plaintiff Don Young, requests an entry of an Order the following relief:

- a. Certifying this action as a collective action (for the FLSA collective) pursuant to 29 U.S.C. § 216(b);
- b. Certifying this action as a class action (for the Rule 23 Class) pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's state law claims;
- c. Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of Rule 23 Class members, and permitting Plaintiff to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the class members of their rights by law to join and participate in this lawsuit;
- d. Designating Plaintiff as the representatives of the FLSA Collective and undersigned counsel as Collective counsel for the same;
- e. Designating Plaintiff as the representatives of the Rule 23 Class, and undersigned counsel as Class counsel for the same;
- f. Declaring Defendant willfully violated the FLSA and the Department of Labor's attendant regulations as cited herein;
- g. Finding Defendant liable to Plaintiff, the FLSA Collective, and the Rule 23 Class for the alleged violations of the FLSA, NJWHL and NJWPL alleged herein;
- h. Granting judgment in favor of Plaintiff and against Defendant and awarding Plaintiff, the FLSA Collective, and the Rule 23 Class the full amount of damages and liquidated damages available by law;
- i. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action;
- j. Awarding pre- and post-judgment interest to Plaintiff on these damages; and
- k. Awarding such other and further relief as this Court deems appropriate.

JURY DEMAND

Plaintiff, Don Young, individually and on behalf of all others similarly situated, by and through his attorneys, hereby demand a trial by jury pursuant to Fed. R. Civ. P. 38 with respect to the above cause.

Dated: December 6, 2024

Respectfully submitted,

s/ Nicholas Conlon

Nicholas Conlon (NJ Bar ID # 34052013)

Jason T. Brown (NJ Bar ID # 035921996)

Eric Sands (*will seek Pro Hac Vice admission*)

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