

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

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FELIX ANDUJAR, :  
:  
Plaintiff, :  
:  
-against- :  
:  
TERRACE REALTY ASSOCIATES LLC, :  
66-72 FORT WASHINGTON LP, and METRO :  
PAYROLL SERVICES, INC. :  
:  
Defendants. x  
:  
Defendants.

Index No.: **152787/2014**

**SUMMONS**

**JURY TRIAL DEMANDED**


Place of Trial: New York County

The basis of venue is defendants' place of business and plaintiff's residence.

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To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiffs' attorneys within twenty (20) days after the service of this summons exclusive of the date of service (or within thirty (30) days after the service if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded below.

Dated: March 26, 2014  
New York, New York



\_\_\_\_\_  
Maia Goodell, of counsel to  
Jeanette Zelhof, Esq.,  
MFY LEGAL SERVICES, INC.  
299 Broadway, 4th Floor  
New York, NY 10007  
(212) 417-3700

DEFENDANT ADDRESS:

Terrace Realty Associates, LLC  
72 Madson Avenue, 6<sup>th</sup> Floor  
New York, NY 10016

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

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DEFENDANT ADDRESS:

66-72 Fort Washington LP  
72 Madison Avenue, 6<sup>th</sup> Floor  
New York, NY 10016

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

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Plaintiff, :  
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DEFENDANT ADDRESS:

Metro Payroll Services, Inc.  
1251 Avenue of the Americas  
New York, NY 10020

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

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FELIX ANDUJAR, :  
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Plaintiff, : Index No.: **152787/2014**  
:  
-against- : **COMPLAINT**  
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TERRACE REALTY ASSOCIATES LLC, :  
66-72 FORT WASHINGTON LP, and METRO : **JURY TRIAL DEMANDED**  
PAYROLL SERVICES, INC. :  
:  
Defendants. x  
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Plaintiff Felix Andujar, by his attorneys MFY Legal Services, Inc., complains of Terrace Realty Associates LLC, 66-72 Fort Washington LP, and Metro Payroll Services, Inc.

("defendants") as follows:

**NATURE OF ACTION**

1. Plaintiff Andujar worked as a building superintendent for defendants and their predecessors for 24 years. He lived with his family in a basement apartment.

2. Defendants bought the building in 2012. In December 2013, Adam Harris, defendants' property manager, asked Mr. Andujar when he would retire. When Mr. Andujar responded that he could not afford to retire and had no plans to retire, Harris and David Drumheller, defendants' operations manager, handed him a letter purporting to fire him "with cause." Defendants shortly thereafter commenced a holdover proceeding in New York County Civil Court, Housing Part, L&T Index No. 14N056810/2014.

3. Mr. Andujar worked weekends and some evenings performing tasks that could not be performed within the 40-hour workweek, such as sorting trash and shoveling snow. Defendants did not pay him for these overtime hours.

4. Therefore, Andujar brings this proceeding to remedy defendants' unlawful age discrimination in violation of the New York City Human Rights Law, Administrative Code of the City of New York § 8-107; to remedy defendants' willful failure to pay overtime wages, in violation of the Fair Labor Standards Act, the New York Minimum Wage Act and/or New York Labor Law § 650, et seq., and 12 NYCRR 146-1.6; and to remedy defendants' failure to provide written information about his employment and rate or manner of pay for the work he performed, in violation of New York Labor Law § 195.

5. Andujar is entitled to reinstatement, back pay, prejudgment interest, compensatory and punitive damages for emotional distress, the costs of this proceeding, and attorney's fees under New York City Human Rights Law. Andujar is also entitled to recover unpaid overtime wages, additional equal amounts in liquidated damages, notice penalties, prejudgment interest, and attorney's fees pursuant to the Fair Labor Standards Act, the New York Minimum Wage Act and/or New York Labor Law.

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to New York State Constitution Art. 6, § 7.

7. Venue is appropriate in this Court pursuant to Civil Practice Law and Rules § 503 because plaintiff's residence and defendants' principal place of business is in New York County, New York.

#### **PARTIES**

8. Andujar is a 65-year-old man residing in Washington Heights, New York. He is a U.S. citizen. He is originally from the Dominican Republic.

9. Terrace Realty Associates, LLC is a New York limited liability corporation with its principal place of business at 72 Madison Avenue, 6<sup>th</sup> Floor, New York, New York.

10. Terrace Realty Associates LLC was plaintiff's employer within the meaning of the Fair Labor Standards Act, New York Labor Law, and the New York City Human Rights Law at times relevant to this litigation.

11. Upon information and belief, Terrace Realty Associates LLC is the parent company of 66-72 Fort Washington LP.

12. Upon information and belief, Terrace Realty Associates LLC operates more than ten apartment buildings and does more than \$500,000 per year in gross business.

13. 66-72 Fort Washington LP is a Delaware Limited Partnership with its principal place of business at 72 Madison Avenue, 6<sup>th</sup> Floor, New York, New York. It is registered to do business in New York.

14. Upon information and belief, 66-72 Fort Washington LP owns and operates the building at 66-72 Fort Washington Avenue, which has approximately 44 apartments.

15. 66-72 Fort Washington LP was plaintiff's employer within the meaning of the Fair Labor Standards Act, New York Labor Law, and the New York City Human Rights Law at times relevant to this litigation.

16. Upon information and belief, Metro Payroll Services, Inc. is a New York Company with offices at 1251 Avenue of the Americas, New York, New York.

17. Upon information and belief, Metro Payroll Services, Inc. was plaintiff's employer within the meaning of the Fair Labor Standards Act, New York Labor Law, and New York City Human Rights Law at times relevant to this litigation.

## STATEMENT OF FACTS

18. Plaintiff began working as a building superintendent at 66-72 Fort Washington Avenue (“Building”) in approximately 1989.

19. Plaintiff’s work was always good. He never received any written performance warnings.

20. Plaintiff does not recall receiving any documents concerning his pay rate, or about offsetting his pay for the rent of his apartment.

21. Throughout his employment at the Building, plaintiff regularly worked Monday through Friday from 8:00 a.m. to 5:00 p.m. with a lunch hour. He conducted or oversaw repairs in the apartments and on the building, cleaned the building common areas (inside and out), organized and took out the trash, and performed other duties.

22. In addition to these regular hours, plaintiff regularly worked for three to four hours every Saturday, cleaning the building common areas, organizing trash, and other duties.

23. Plaintiff regularly worked approximately an hour every Sunday organizing the trash and taking it to the street for the Monday morning pickup.

24. Plaintiff also performed other duties such as shoveling snow and emergency repairs as necessary outside his normal work hours.

25. At all times relevant to this litigation, plaintiff and the Building owners had an agreement that plaintiff would be paid on an hourly basis for his work at the Building.

26. At all times relevant to this litigation, plaintiff typically received pay for his regular workweek of forty hours.

27. Prior to defendants’ takeover of the building, plaintiff periodically received some overtime payments, although he was not paid for all the overtime hours he worked.

28. After defendants took over in May 2012, plaintiff received no overtime pay.
29. On December 5, 2013, defendants called plaintiff to its offices at 72 Madison Avenue for a meeting. The three other superintendents from nearby buildings also owned by defendants were present in the office. Harris, the property manager, called them in one by one.
30. When plaintiff Andujar was called in, Harris asked when Andujar planned to retire.
31. Harris spoke English; Andujar understands some English but his primary language is Spanish.
32. Apparently to make himself understood, Harris typed “retirement” on his cell phone and showed the word to Andujar.
33. Andujar responded that he could not afford to retire and did not plan to do so.
34. Harris then left the meeting and returned with Drumheller, the operations manager. They handed Andujar a letter, which stated: “This letter is to serve as notice of your termination of employment **with cause** from Terrace Realty Associates, LLC (“Terrace”) and/or 66-42 Fort Washington LP (“66”).” (Emphasis in original.)
35. Harris and Drumheller called into the meeting an office administrative assistant who spoke Spanish to help translate.
36. They said that Andujar was being laid off. They also said his employment was terminated because Andujar said three times he was going to retire.
37. Andujar responded that he was going to get an attorney because he did not agree.
38. In an effort to resolve the matter without resort to litigation, Andujar collected letters of support from about 40 of the approximately 44 units in the building.



39. The building tenants' letters stated that the tenants were pleased with Andujar's service as superintendent. They asked defendants to reconsider and let Andujar maintain his job.

40. Defendants did not reinstate Andujar.

41. Tenants told Andujar that, when they called to complain about Andujar's firing, defendants' office said, "You are not the owners of the building."

42. On March 4, 2014, defendants filed a holdover proceeding seeking to evict Andujar and his family from their basement apartment, L&T Index No. 14N056810/2014.

43. Upon information and belief, the three other superintendents from nearby buildings owned by defendants, who were also called in to the office when Andujar was dismissed, are still working for defendants. Upon information and belief, the three still-employed superintendents are younger than Andujar.

44. A new superintendent is performing the work that Andujar had been doing in the Building. Upon information and belief, the new superintendent is in his 30s or 40s.

### **FIRST CLAIM FOR RELIEF**

#### **OVERTIME WAGE VIOLATIONS: NEW YORK LABOR LAW**

45. Plaintiff realleges and incorporates by reference all preceding paragraphs.

46. Defendants failed to pay plaintiff at a rate of one-and-one-half times plaintiff's regular pay rate for all hours worked in excess of forty in a given workweek.

47. As a result of defendants' willful violation of plaintiff's rights under the New York Minimum Wage Act, Plaintiff is entitled to recover from defendants for unpaid overtime wages, an equal amount in liquidated damages, prejudgment interest, costs of this proceeding, and reasonable attorney's fees, pursuant to New York Labor Law § 663 (1).

## **SECOND CLAIM FOR RELIEF**

### **OVERTIME WAGE VIOLATIONS: FAIR LABOR STANDARDS ACT**

48. Plaintiff realleges and incorporates by reference all preceding paragraphs.

49. Defendants failed to pay plaintiff at a rate of one-and-one-half times plaintiff's regular pay rate for all hours worked in excess of forty in a given workweek, in violation of 29 U.S.C. § 207(a)(1).

50. As a result of defendants' willful violation of plaintiff's rights under the Fair Labor Standards Act, Plaintiff is entitled to recover from defendants for unpaid overtime wages, an equal amount in liquidated damages, prejudgment interest, costs of this proceeding, and reasonable attorney's fees.

## **THIRD CLAIM FOR RELIEF**

### **FAILURE TO PROVIDE NOTICE UPON HIRE: NEW YORK LABOR LAW**

51. Plaintiff realleges and incorporates by reference all preceding paragraphs.

52. Defendants failed to provide plaintiff at the time of his hire a notice including information about the rate and basis of plaintiff's pay, and defendants' name, address, and telephone number, as required by New York Labor Law § 195 (1) (a).

53. As a result of defendants' violations, plaintiff is entitled to recover from defendants \$100 per week for each week following the start of his employment in which defendants failed to provide the required notice, up to the maximum penalty amount of \$2,500, as well as costs of this action, prejudgment interest, and reasonable attorney's fees pursuant to New York Labor Law § 198 (1-b).

**FOURTH CLAIM FOR RELIEF**

**UNLAWFUL AGE DISCRIMINATION:**

**NEW YORK CITY HUMAN RIGHTS LAW**

54. Plaintiff realleges and incorporates by reference all preceding paragraphs.

55. Defendants unlawfully discriminated against plaintiff by terminating his employment because of his age.

56. As a result of defendants' willful violation of plaintiff's rights under the New York City Human Rights Law, plaintiff is entitled to recover from defendants amounts to be determined at trial for emotional distress, punitive damages, costs of this action, and reasonable attorney's fees, pursuant to Administrative Code of the City of New York § 8-502.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court grant the following relief:

a. Reinstatement plaintiff to his position, pursuant to the New York City Human Rights Law, Administrative Code of the City of New York § 8-502 (a);

b. Declare defendants' conduct complained of herein to be in violation of the Fair Labor Standards Act, New York Labor Law, and New York City Human Rights Law;

c. Award plaintiff damages to make him whole for all earnings and all benefits he would have received but for defendants' discriminatory treatment, including but not limited to, back pay, front pay and lost benefits, pursuant to the the New York City Human Rights Law, Administrative Code of the City of New York § 8-502 (a);

d. Award plaintiff damages for emotional distress pursuant to the New York City Human Rights Law, Administrative Code of the City of New York § 8-502 (a);

e. Award plaintiff punitive damages pursuant to the New York City Human Rights Law, Administrative Code of the City of New York § 8-502 (a);

f. Award plaintiff unpaid overtime wages and an additional equal amount as liquidated damages, pursuant to New York Labor Law § 663 (1) and the Fair Labor Standards Act;

g. Award plaintiff prejudgment interest;

h. Award plaintiff the costs of this action together with reasonable attorney's fees pursuant to New York Labor Law §§ 198 (1-a), 663 (1); the Fair Labor Standards Act; and Administrative Code of the City of New York § 8-502 (f); and,

i. Award plaintiff such other and further relief as this Court deems necessary and proper.

Dated: March 26, 2014  
New York, New York



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