

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

-----X  
CATHERINE KELLY, on behalf of :  
herself and all others similarly situated, :  
:  
:  
Plaintiff, :  
:  
:  
-against- :  
:  
:  
VASSAR BROTHERS MEDICAL :  
CENTER, :  
:  
:  
Defendant. :  
-----X

Index No: 2017-51837  
Date Filed: 7/25/2017  
  
SUMMONS

To: Vassar Brothers Medical Center  
45 Reade Place  
Poughkeepsie, NY 12550

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the date of service, where service is made by delivery upon you personally within the State, or within thirty (30) days after completion of service where service is made in any other manner. In case of your failure to appear or to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Dutchess County as the place of trial.

The basis for venue is Defendant's place of business.

Dated: July 25, 2017  
Roslyn, New York

THE LAW FIRM OF LOUIS GINSBERG, P.C.  
Attorneys for Plaintiff and the Putative New York Classes  
1613 Northern Boulevard  
Roslyn, NY 11576  
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS**

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**CATHERINE KELLY, on behalf of herself  
and all others similarly situated,**

**Plaintiff,**

**-against-**

**VASSAR BROTHERS MEDICAL CENTER,**

**Defendant.**  
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Index No.: 2017-51837  
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**COMPLAINT  
JURY TRIAL DEMANDED**

Plaintiff Catherine Kelly (“Plaintiff”), on behalf of herself and all other similarly situated employees, upon personal knowledge as to herself and upon information and belief to other matters, by and through her undersigned counsel, alleges for her Complaint as follows:

**NATURE OF ACTION**

1. Plaintiff brings this action on behalf of herself and on behalf of current and former employees of Defendant Vassar Brothers Medical Center (“Defendant” or “Vassar Brothers”) who worked during the period commencing six (6) years prior to the filing of this action and continuing until such further date as the practices complained of are discontinued (“Class Period”). The Class is comprised of current and former respiratory therapists of Defendant (“Respiratory Therapists”) who worked through their automatically deducted meal break, and/or who worked before the start of their shift without compensation, and/or who worked past the end of their shift without compensation.

2. As particularized below, Defendant has engaged and continues to engage in illegal and improper wage practices. Defendant has failed to pay Plaintiff, and the similarly situated current and former Respiratory Therapists, for any and all work done during their automatically deducted one half hour meal break, and has failed to pay for all pre-shift and post-shift work.

## PARTIES

3. Plaintiff Catherine Kelly resides in Dutchess County, New York. Plaintiff had been, throughout her entire employment with Defendant, a covered employee within the meaning of the New York Labor Law (“NYLL”).

4. Defendant employed Plaintiff at its hospital located at 45 Reade Place, Poughkeepsie, New York 12550. Defendant maintained control, oversight, and direction over Plaintiff and the similarly situated Class Members regarding time keeping, payroll, and other employment practices applicable to them, and functions as an employer pursuant to the NYLL §190(3). As described below, Defendant by virtue of its management and control over the wages and work of its employees is classified as an “employer” under the NYLL.

## CLASS ACTION ALLEGATIONS

5. Plaintiff brings this action on her own behalf and as a class action pursuant to CPLR Article 9 with the Class consisting of:

All current and former Respiratory Therapists who worked for Defendant in the State of New York during the Class Period and who (a) were not paid for time worked during all or part of a meal break; (b) were not paid for time worked before the start of their scheduled shift; (c) were not paid for time worked after their shift ended; (d) were not paid overtime of time and one-half their regular rate of pay for all hours worked over forty (40) in a week; and/or (e) were not paid their straight or agreed upon wage for all hours worked up to forty (40) in a week; and (f) were not provided accurate wage statements (collectively the “Class Members”).

6. Excluded from the Class are the Defendant’s legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the Class Period has had, a controlling interest in Defendant, and all persons who submit timely and otherwise proper requests for exclusion from the Class.

7. During the Class Period, upon information and belief, the Defendant employed in excess of forty (40) Respiratory Therapists in the Class. Defendant systematically failed and refused to pay them properly for all compensable hours worked. The Class Members are so numerous that joinder of all members in one proceeding is impracticable.

8. Plaintiff's claims are typical of the claims of other members of the Class because the Class consists of Respiratory Therapists of Defendant who worked through their automatically deducted meal break period without compensation, who worked before their scheduled shift time without compensation, who worked after their scheduled shift time without compensation, who failed to receive overtime compensation of time and one-half their regular rate of pay for all hours worked over forty (40) in a week, and who have not been compensated at the straight or agreed upon rate for all work performed up to forty (40) hours in a week. Plaintiff and other members of the Class have sustained similar types of damages as a result of the Defendant's failure to comply with the NYLL. Plaintiff and other members of the Class have been injured in that they have been uncompensated or under-compensated due to the Defendant's common policies, practices, and patterns of conduct.

9. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel competent and experienced in complex class action and wage and hour litigation. There is no conflict between the Plaintiff and the Class.

10. Defendant has acted or has refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class.

11. Common questions of law and fact exist as to the Class that predominate over any questions solely affecting them individually and include, but are not limited to, the following:

- a. Whether Defendant failed and/or refused to pay Plaintiff and the Class for all work performed during meal breaks;
- b. Whether Defendant failed and/or refused to pay Plaintiff and the Class for all work performed before the start of their scheduled shift;
- c. Whether Defendant failed and/or refused to pay Plaintiff and the Class for all work performed after the scheduled end of their shift;
- d. Whether Defendant correctly compensated members of the Class for all hours worked in excess of forty (40) per week;
- e. Whether Defendant failed and/or refused to pay Plaintiff and the Class overtime pay of time and one-half their regular rate of pay for all hours worked over forty (40) in a week in violation of the NYLL;
- f. Whether Defendant failed and/or refused to pay Plaintiff and the Class for all straight or agreed upon wages for any work performed up to forty (40) hours in a week in violation of the NYLL;
- g. Whether Defendant failed to keep true and accurate time records for all hours worked by their employees as required by New York Labor Law §§ 190 *et seq.* and 650 *et seq.*;
- h. Whether the Defendant failed to provide Plaintiff and the Class with an accurate statement with every payment of wages, listing accurate gross wages, deductions and accurate net wages as required by New York Labor Law § 195(3);
- i. Whether Defendant engaged in a pattern and/or practice in New York of forcing, coercing, and/or permitting Plaintiff and the Class to perform

work for Defendant's benefit which was not compensated;

- j. Whether Defendant should be enjoined from such violations of the NYLL in the future; and
- k. The nature and extent of class-wide injury and the measure of damages for those injuries.

12. Class action treatment is superior to any alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. Individual Class Members' damages are inadequate to justify the costs of prosecuting their claims in any manner other than a class action. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Class Members are readily identifiable from the Defendant's records.

13. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the Defendant.

14. Without a class action, Defendant would retain the benefit of its wrongdoing and will continue a course of action that will result in further damages to Plaintiff and the Class.

15. Plaintiff intends to send notice to all members of the Class to the extent required by Article 9 of the CPLR.

### **FACTS**

16. Plaintiff was employed by Defendant as a Respiratory Therapist, a non-exempt hourly

worker, from in or around December of 1999 until on or about January 18, 2013 at Defendant's hospital located at 45 Reade Place, Poughkeepsie, New York 12550. Throughout her employment at Defendant, Plaintiff's job duties were of a non-exempt nature, and included performing ventilator checks, assisting patients, providing breathing treatments and assisting with emergencies. Plaintiff was typically scheduled to work three (3) shifts per week with each shift being thirteen and one-half (13.5) hours in length. Additionally, Plaintiff would work an extra shift or four (4) shifts per week approximately once a month. Plaintiff's last hourly wage was approximately \$41.55.

17. Defendant maintains a policy or practice of automatically deducting thirty (30) minutes per shift for each Class member for an unpaid meal break. Yet, Plaintiff and other Class members performed work without compensation during their meal breaks that was integral and indispensable to their job duties at Defendant.

18. Plaintiff was required by Defendant to work fifteen (15) to thirty (30) minutes without compensation during two (2) to four (4) meal breaks per week. Such uncompensated work performed during meal breaks included, but was not limited to, Plaintiff's core job duties of performing ventilator checks, assisting patients, providing breathing treatments and assisting with emergencies. These uncompensated duties performed during meal breaks were integral and indispensable to Plaintiff's duties.

19. Additionally, Plaintiff and other Class members worked before the start of their shift and did not get compensated for all of this work. For example, Plaintiff worked ten (10) to thirty (30) minutes before the scheduled start of her shift on average one (1) to (2) times a week. Such uncompensated worked performed before the start of Plaintiff's shift included but was not limited to, Plaintiff's core job duties of performing ventilator checks, assisting patients,

providing breathing treatments and assisting with emergencies. These uncompensated duties performed before the start of her shift were integral and indispensable to Plaintiff's duties.

20. Plaintiff and other Class members also worked after the scheduled end of their shift without compensation. By example, Plaintiff worked ten (10) to thirty (30) minutes after the scheduled end of her shift and did not get compensated for all time worked on average one (1) to (2) times a week. Such uncompensated work performed after the end of Plaintiff's shift included but was not limited to, Plaintiff's core job duties of performing ventilator checks, assisting patients, providing breathing treatments and assisting with emergencies. These uncompensated duties performed after the end of her shift were integral and indispensable to Plaintiff's duties.

21. Thus, because of Defendant's improper compensation policies, on average, Plaintiff was deprived of fifty (50) to sixty (60) minutes of uncompensated straight time per week in violation of the NYLL. In addition, Plaintiff was deprived of five (5) minutes to four (4) hours of uncompensated overtime per week in violation of the NYLL.

22. Previously, a complaint was filed with the United States Department of Labor regarding the uncompensated work performed during meal breaks. Upon information and belief, as a result, in or about September, 2015, Defendant paid Plaintiff and other Class members some back wages owed for work done during meal breaks.

23. For Class members, Defendant provided inaccurate wage statements because the statements did not list all the hours worked by Plaintiff and other Class members and also did not list their proper gross and net pay.



**AS AND FOR PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR NONPAYMENT OF OVERTIME IN VIOLATION OF THE  
NEW YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

24. Plaintiff incorporates paragraphs 1-23 as if fully rewritten herein.
25. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations 12 NYCRR 142-3.2 apply to Defendant and protect Plaintiff and the Class.
26. Defendant has failed to pay Plaintiff and the Class overtime wages to which they are entitled under the New York Labor Law and the supporting New York State Department of Labor Regulations.
27. By Defendant's knowing and/or intentional failure to pay Plaintiff and the Class overtime wages for hours worked in excess of forty (40) hours in a week, Defendant has willfully violated New York Labor Law §§ 190, *et. seq.*, including but not limit to §§ 190, 191, 193, 198, New York Labor Law §§ 650 *et. seq.*, and the supporting New York State Department of Labor Regulations.
28. Due to Defendant's violations of the NYLL, Plaintiff and the Class are entitled to recover from Defendant their unpaid overtime wages, attorneys' fees, costs, and pre-judgment and post-judgment interest.
29. Plaintiff does not seek liquidated damages under the NYLL on behalf of the Class but reserves her right to do so.

**AS AND FOR PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR NONPAYMENT OF STRAIGHT OR AGREED UPON WAGES  
IN VIOLATION OF THE NEW YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

30. Plaintiff incorporates paragraphs 1-29 as if fully rewritten herein.
31. Pursuant to New York Labor Law §§ 190 *et seq.* including but not limited to, 190, 191,

193, 198, and 663(1), the Defendant has willfully failed to pay the straight or agreed upon wages due as set forth in the preceding paragraphs of this Complaint to Plaintiff and the Class in violation of New York Labor Law §§ 190 *et seq.* including but not limited to, 190, 191, 193, 198, and 663(1).

32. The Defendant was not and is not permitted by state or federal law or by order of a court of competent jurisdiction, to withhold, divert, or deduct any portion of the Plaintiff's and the Class' wages that concern this lawsuit.

33. Pursuant to New York Labor Law § 198, employers such as the Defendant who intentionally fail to pay hourly employees wages in conformance with New York Labor Law shall be liable to the hourly employees for the wages that were intentionally not paid, and court costs and attorneys' fees incurred in recovering the unpaid wages.

34. The Defendant has violated the NYLL by failing to pay Plaintiff and the Class for all compensable time and by failing to pay Plaintiff and the Class for the straight or agreed upon wages worked at the established rate.

35. Plaintiff, on behalf of herself and the Class, seeks the amount of underpayments based on the Defendant's failure to pay straight or agreed upon wages for all hours worked as provided by the NYLL, as well as reasonable attorneys' fees and costs of the action, pre-judgment and post-judgment interest, and such other legal and equitable relief as the Court deems just and proper.

36. Plaintiff does not seek liquidated damages under the NYLL on behalf of the Class but reserves her right to do so.

**AS AND FOR PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST THE  
DEFENDANT FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN  
VIOLATION OF THE NEW YORK LABOR LAW  
(On behalf of Plaintiff and the Class)**

37. Plaintiff incorporates paragraphs 1-36 as if fully rewritten herein.

38. Defendant has also willfully failed to supply Plaintiff and the Class, as required by NYLL, Article 6, § 195(3) with an accurate statement with every payment of wages, listing accurate gross wages, deductions and accurate net wages.

39. Through its knowing or intentional failure to provide Plaintiff and the Class with the accurate wage statements required by the NYLL, Defendant has willfully violated NYLL, Article 6, §§ 190 *et seq.*, and the supporting New York State Department of Labor Regulations.

40. Due to Defendant's willful violation of NYLL, Article 6, § 195(3), Plaintiff and the Class are entitled to damages of two hundred and fifty dollars for each day that Defendant failed to provide Plaintiff and the Class members with an accurate wage statement, or a total of five thousand dollars each, reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided by NYLL, Article 6, § 198(1-d).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, respectfully seeks the following relief against the Defendant:

- (a) Certification of the Class as described herein under CPLR Article 9 and appointing Plaintiff as representative of the Class and Plaintiff's counsel as Lead Counsel for the Class;
- (b) An Award for the amount of the Plaintiff's and the Class' unpaid agreed-upon or straight wages, and unpaid overtime, and pre- and post-judgment interest as allowed by law;
- (c) An award to Plaintiff and the Class of damages for each workday that Defendant failed to provide Plaintiff and the Class members with an accurate wage statement, or a total of \$5,000 for Plaintiff and for each Class member,

as provided by the NYLL;

- (d) An award of injunctive relief as the Court deems necessary and proper to prevent against future violations of New York Labor Law;
- (e) An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to New York Labor Law; and
- (f) An award of expert fees; and
- (g) An award to Plaintiff and the Class of such further relief as this Court deems just and proper.

Dated: July 25, 2017  
Roslyn, New York

Respectfully submitted,

THE LAW FIRM OF  
LOUIS GINSBERG, P.C.

By:           s/Louis Ginsberg            
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