

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

KIRSTEN TORNATORE, LINZE LUCAS, AND  
DANIELLE SAUERS, individually and on behalf  
of all other employees similarly situated,

*Plaintiffs,*

v.

CGI COMMUNICATIONS, INC., a corporation,

*Defendant.*

PLAINTIFFS DEMAND  
TRIAL BY JURY

Case No. 14-cv-\_\_\_\_\_

CLASS AND COLLECTIVE ACTION COMPLAINT

Plaintiffs and class representatives, KIRSTEN TORNATORE, LINZE LUCAS,  
AND DANIELLE SAUERS (“Named Plaintiffs”) by their attorneys SANTIAGO  
BURGER ANNECHINO LLP, Michael A. Burger, of counsel, assert as follows:

I. Nature of Claim

1. This lawsuit seeks declaratory relief and monetary damages to redress Defendant CGI COMMUNICATIONS, INC.’S (“CGI”) deprivation of rights secured to the Named Plaintiffs individually, as well as all other employees similarly situated, under the Fair Labor Standards Act of 1938, as amended, 29 USC § 201, *et. seq.* (“FLSA”) and under the New York Labor Law article

19 (“NYLL”), for failure to pay due and earned compensation.

2. CGI is involved in interstate commerce, providing marketing materials such as promotional web sites and videos to municipalities and businesses within and without the United States.
3. Typically, CGI will approach a municipality or enterprise with a proposed stock website or video populated with basic information about the target municipality or enterprise, casting the proffered service as a reputation-building and advertising opportunity for the target customer.

## II. Jurisdiction and Venue

4. The original subject matter jurisdiction of this Court is invoked under 28 USC §§ 1331, 1337, 1343, 2201 and 29 USC § 216.
5. This Court’s supplemental jurisdiction of the related NYLL claims is also invoked under 28 USC § 1367 because such claims arise from a common nucleus of operative facts with the federal claims and are so related as to form part of the same case or controversy under United States Constitution, Article III.
6. The Western District of New York is the proper venue for this case because Defendant’s violations occurred, and the Named Plaintiffs’ claims arose, in this District, Defendant does business and maintains its principal office within this District, and Named Plaintiffs reside in this District.

III. Parties

7. Named Plaintiff, KIRSTEN TORNATORE, resides at 1816 W. Bloomfield Road, Honeoye Falls, NY 14472; Defendant employed her during the years 2011 and 2012.
8. Named Plaintiff, LINZE LUCAS, resides at 55-57 Strong Street, Rochester, NY 14621; Defendant employed her during the years 2011 and 2012.
9. Named Plaintiff, DANIELLE SAUERS, resides at 57 Elmford Road, Rochester, NY 14606; Defendant employed her during the years 2011 and 2012.
10. At all relevant times, Named Plaintiffs were Defendant's employees under the FLSA and the NYLL.
11. At all relevant times, Named Plaintiffs did not meet the requirements to be considered "exempt" employees under the FLSA or NYLL.
12. The Class Members are those employees similarly situated to Named Plaintiffs in that they were non-exempt employees performing duties similar to those assigned to "writers", who worked more than 40 hours per week and were not properly compensated for all hours worked.
13. Defendant CGI is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 130 East Main Street, 8<sup>th</sup> Floor, Rochester, New York 14604, where it maintained the

office out of which Named Plaintiffs were employed (“Office”).

14. Defendant generates annual gross revenues of not less than \$500,000.
15. At all relevant times, Defendant was an “employer” within the meaning of the FLSA and the NYLL, employing the Named Plaintiffs and those similarly situated within 29 USC § 203(d) and comprising an “enterprise” engaged in interstate commerce or the production of goods for commerce as defined in 29 USC § 203(r) and (s).
16. This Complaint provides written notice that, pursuant to Section 630 of the New York Business Corporations Law, Named Plaintiffs and all putative plaintiffs intend to hold Defendant’s ten largest shareholders/members personally liable for all unpaid wages.

#### IV. Class Action Information

17. Defendant’s violations of the NYLL are properly prosecuted as a class action under Federal Rule of Civil Procedure 23.
18. The Class, comprised of “similarly situated” employees or “class members”, is defined as those current and/or former non-exempt employees whom Defendant employed as “writers” or employees performing any duties similar to those performed by “writers”, regardless of actual title, whom Defendant did not pay for all hours suffered or permitted to work, including overtime pay for hours worked more than forty (40) per individual work week.

19. The Class is believed to be over fifty (50) employees, which makes the class so numerous that joinder of all of the members would be impractical.
20. The Named Plaintiffs will adequately represent the interests of the Class Members because they are similarly situated to the Class Members and their claims are typical of, and concurrent to, the claims of the other Class Members.
21. There are no known conflicts of interest between the Named Plaintiffs and the other Class Members.
22. The Class Counsel, Santiago Burger Annechino LLP, is qualified and able to litigate the Class Members' claims. Class Counsel concentrates a portion of its law practice in the fields of employment law and litigation and has nearly fifty (50) years of combined law practice experience among its attorneys.
23. Common questions of law and fact predominate in this action because the claims of all the Class Members are based on whether Defendant's failure to pay overtime and straight time to non-exempt employees for all hours worked violates the New York Labor Law and other statutes requiring the payment of wages.
24. The class action is superior to other available methods for the fair and efficient adjudication of the controversy.

V. Background

25. Defendant employed Named Plaintiffs and Class Members in Rochester, New York.
26. Defendant sometimes gave Named Plaintiffs and Class Members the title of “writer”. A “writer” or one who performed the duties of a “writer” was required to act with intelligence, diligence and accuracy, but her primary duties did not include the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
27. “Writers”, Named Plaintiffs and Class Members performed some or all of the following duties for Defendant:
  - a. Speaking on the telephone, communicating with customers, potential customers and third party “partners”.
  - b. Formatting, proofreading, rewording, fact-checking and editing assigned “scripts” for Defendant.
  - c. Obtaining background factual research about a customer or target customer, and then plugging relevant facts into a prescribed “script”, so that the scripts would conform to Defendant’s parameters for word-count and content, etc. Defendant’s “scripts” were typically “fill-in-the-blank”, such as a “Mad Libs” story.

28. Defendant assigned each of the Named Plaintiffs, KIRSTEN TORNATORE, LINZE LUCAS and DANIELLE SAUERS, the title of "writer".
29. When they came to work for Defendant, Named Plaintiffs were young recent college graduates with little work experience and no specialized training or education who performed the duties of "writers" as instructed by Defendant.
30. Defendant compensated each Named Plaintiff in an amount equal to approximately twenty-five thousand dollars (\$25,000) per year, regardless of the overtime or Unpaid Work they performed.
31. Defendant required Named Plaintiffs' and Class Members' to work at a minimum, from 8:00AM through 5:00PM, Monday through Friday, excepting up to one unpaid hour for lunch between 12:00PM and 1:00PM ("Office Hours").
32. Plaintiffs did in fact habitually work for Defendant at the Office, during Office Hours, as required.
33. Defendant did occasionally allow Named Plaintiffs to leave before the end of Office Hours on condition that they go to a bar with members of the management and/or executive team.
34. To meet Defendant's production goals and complete their required job duties, Defendant also required Named Plaintiffs and Class Members to perform unpaid work or overtime work above 40 hours per week without overtime

pay, performing the duties assigned to “writers”, predominantly for Defendant’s benefit, outside Defendant’s normal Office Hours and/or outside of the Office (“Unpaid Work”).

35. Defendant did not pay Named Plaintiffs and Class Members for Unpaid Work.

36. Unpaid Work tasks included, without limitation, the work performed by Named Plaintiffs such as: placing telephone calls to clients or “partners”; “script writing”; and background research on clients or potential clients to obtain basic facts necessary to “plug in” to “scripts”.

37. All Unpaid Work was compensable time under the FLSA and the NYLL.

38. Defendant suffered or permitted Named Plaintiffs and Class Members to perform Unpaid Work.

39. Defendant knew that Named Plaintiffs and Class Members performed Unpaid Work for Defendant *inside* the Office, because for example and without limitation:

a. Defendant’s managerial staff saw Named Plaintiffs and Class Members performing Unpaid Work at the Office outside of Office Hours;

b. Defendant’s managerial staff directed Named Plaintiffs and Class Members to work outside of Office Hours;



- c. Defendant's managerial staff discussed Named Plaintiffs' and Class Members' Unpaid Work with them directly and in person; and/or
  - d. Defendant was otherwise in control of the Office when it suffered or permitted such Unpaid Work.
40. Defendant was aware that Named Plaintiffs and Class Members performed Unpaid Work for Defendant *outside* the Office, because for example and without limitation:
- a. Defendant's managerial staff directed Named Plaintiffs and Class Members to perform Unpaid Work outside of the Office;
  - b. Defendant's managerial staff discussed Named Plaintiffs' and Class Members' Unpaid Work with them directly and in person; and/or
  - c. Defendant knowingly assigned Named Plaintiffs and Class Members an amount of work or "quota" that required them to work outside of Office Hours and/or from home on days when they were not properly compensated.
41. Despite being aware of and suffering or permitting Named Plaintiffs and Class Members to perform Unpaid Work, Defendant instructed Named Plaintiffs and Class Members not to request overtime pay;
42. Despite being aware of and suffering or permitting Named Plaintiffs and Class Members to perform Unpaid Work, Defendant failed to maintain

accurate time records with respect to Named Plaintiffs and Class Members.

43. However, Defendant used a security system employing “swipe cards” to allow employees access to the Office and the garage.
44. The “swipe card” records may reveal the times that employees arrived at and departed from the office. These records are not in Named Plaintiffs’ possession.

*Particular Examples of Unpaid Work by Named Plaintiffs*

45. As an example of Unpaid Work performed during the course of her employ, and without limitation, during the week of April 29 through May 3, 2013, Named Plaintiff, KIRSTEN TORNATORE, worked as a writer approximately 48.5 hours, predominantly for Defendant’s benefit, approximately as follows:
  - a. 8 hours, Monday (8:00am to 5:00pm, with a one-hour lunch break);
  - b. 10.5 hours, Tuesday (8:00am to 6:30pm, without a lunch break);
  - c. 9 hours, Wednesday (8:00am to 5:00pm, without a lunch break);
  - d. 9 hours, Thursday (8:00am to 6:00pm, with a one-hour lunch break);
  - e. 9 hours, Friday (8:00am to 5:00pm, without a lunch break); and
  - f. 3 hours on Saturday, at home.
46. The extra 8.5 hours of Unpaid Work was over and above the work MS. TORNATORE performed during Office Hours. Such work was performed

predominantly for Defendant's benefit and at Defendant's express request.

47. The above-described work schedule was common for MS. TORNATORE during the course of her employment, although when she performed Unpaid Work the precise hours of overtime varied depending upon the workload assigned by Defendant.
48. As an example of Unpaid Work performed during the course of her employ, and without limitation, during the week of July 9 through 15, 2012, Named Plaintiff, LINZE LUCAS, worked as a writer for approximately 47 hours, predominantly for Defendant's benefit, as follows:
  - a. 8 hours each day on Monday, July 9, to Friday, July 13, 2012, from 8:00am to 5:00pm, with an hour off for lunch; and
  - b. At least approximately 7 hours on Saturday and Sunday, July 14 and 15, 2012, combined, or approximately 3.5 hours each day. (Named Plaintiff, LINZE LUCAS, also worked 8 hours each day on Monday, July 16, to Friday, July 20, 2012, from 8:00am to 5:00pm, with an hour off for lunch.)
49. The extra 7 hours of Unpaid Work was over and above the work MS. LUCAS performed during Office Hours. Such work was performed predominantly for Defendant's benefit and at Defendant's express request.
50. The above-described work schedule was common for MS. LUCAS during the

course of her employment, although when she performed Unpaid Work the precise hours of overtime varied depending upon the workload assigned by Defendant.

51. As an example of Unpaid Work performed during the course of her employ, and without limitation, during the week of December 3 through 7, 2011, Named Plaintiff, DANIELLE SAUERS, worked as a writer approximately 42.5 to 43.75 hours, predominantly for Defendant's benefit, as follows: 8.5 to 8.75 hours each day on Monday, December 3, to Friday, December 7, 2011.
52. MS. SAUERS came into the office approximately one half hour early each business day (Monday through Friday), working from 7:30am to 5:00pm with a one hour, unpaid lunch from 12:00pm to 1:00pm.
53. The extra 2.5 hours of Unpaid Work was over and above the work MS. SAUERS performed during Office Hours. Such work was performed predominantly for Defendant's benefit and at Defendant's express request.
54. The above-described work schedule was common for MS. SAUERS during the course of her employment, although when she performed Unpaid Work the precise hours of overtime varied depending upon the workload assigned by Defendant.
55. Further details of some Unpaid Work may be gleaned from Defendant's access swipe card system during discovery.

56. Named Plaintiffs' Unpaid Work was necessary, integral and indispensable for the satisfactory performance and completion of their assigned work and meeting Defendant's assigned production requirements.
57. Defendant failed to compensate Named Plaintiffs for such Unpaid Work.

**VI. Defendant's Labor Violations**

***A. Count One - FLSA***

58. Named Plaintiffs adopt and re-assert the information contained in Paragraphs 1 through 57 of the Complaint as though fully set forth herein.
59. Defendant violated the FLSA by failing to pay Named Plaintiffs and Class Members at a rate equal to one and one-half times their regular rate of pay ("overtime") for all hours worked in excess of forty (40) in individual work weeks.
60. Defendant's pay policy and practice was to willfully deprive Named Plaintiffs and the Class Members of their regular rate of pay for all hours worked, as well as for overtime pay for all hours worked during each work week in excess of forty (40).
61. Defendant knew of its obligation to pay "non-exempt" employees hourly straight time and overtime, according to accurate time records of the work performed, or disregarded that fact, and willfully and intentionally chose to

underpay them.

62. Defendant owes Named Plaintiffs and Class Members back wages, liquidated damages, interest, fees and costs, pursuant to the FLSA.
63. Defendant acted in bad faith in failing to properly compensate Named Plaintiffs and Class Members for the work they performed.

***B. Count Two - NYLL***

64. Named Plaintiffs adopt and re-assert the information contained in Paragraphs 1 through 63 of the Complaint as though fully set forth herein.
65. Defendant violated the NYLL by failing to pay Named Plaintiffs and Class Members at a rate equal to one and one-half times their regular rate of pay (“overtime”) for all hours worked in excess of forty (40) in individual work weeks.
66. Defendant owes Named Plaintiffs and Class Members back wages, liquidated damages, interest, fees and costs, pursuant to the NYLL.

**VII. Jury Trial Demand**

67. Named Plaintiffs demand a jury trial.

WHEREFORE, Named Plaintiffs, KIRSTEN TORNATORE, LINZE LUCAS, AND DANIELLE SAUERS, respectfully request that this Court enter an Order as

follows:

- A. Directing Defendant to pay a sum equal to the amount of all unpaid compensation for up to three (3) years preceding the filing of this Complaint, according to the applicable statute of limitations for willful violations of the FLSA;
- B. Directing Defendant to pay liquidated damages in an amount equal to the amount of unpaid compensation found due under the FLSA;
- C. Directing Defendant to pay a sum equal to the amount of all unpaid compensation for up to six (6) years preceding the filing of this Complaint, according to the applicable statute of limitations for willful violations of the NYLL;
- D. Directing Defendant to pay liquidated damages in an amount equal to the amount of unpaid compensation found due under the NYLL;
- E. Directing Defendant to pay prejudgment interest;
- F. Directing Defendant to pay reasonable attorneys' fees and costs incurred in vindicating the rights of Named Plaintiffs and Class Members; and
- G. Ordering such other and further relief as to this Court seems

just and appropriate.

Dated: January 31, 2014  
Rochester, New York

Respectfully submitted,

KIRSTEN TORNATORE, LINZE LUCAS, AND  
DANIELLE SAUERS,  
*Named Plaintiffs & Class Representatives*

By: /s/ Michael A. Burger,  
PARTNER, SANTIAGO BURGER ANNECHINO LLP

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