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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**LEONARDO CUAHIZO, FELIPE DE JESUS
RAMIREZ, HECTOR FLORES PUEBLA, and
MARIA CUAHIZO.**

Plaintiffs,

COMPLAINT

-against-

**BORIS NIYAZOV, HEALTH SOURCE
PHARMACY II, INC., HEALTH SOURCE
PHARMACY III B, INC. and HEALTH SOURCE
PHARMACY, INC.**

Defendants.

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Plaintiffs, by their undersigned attorneys, hereby complain of Defendants as follows:

1. This is an action to redress past violations of Plaintiffs' rights under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, Articles 6 and 19 of the New York Labor Law ("NYLL") and regulations promulgated thereunder. Said violations arose from, *inter alia*, (a) Defendants' failures to pay Plaintiffs overtime compensation at one and one-half times their respective regular rates of pay for time worked per week in excess of forty (40) hours; (b) Defendants' failures to pay Plaintiffs wages at or above the minimum wage rates established by federal and state law; (c) Defendants' failures to pay Plaintiffs one hour's pay at the basic New York minimum hourly wage rate, in addition to wages otherwise due to each of them, for each

day of work in which a Plaintiff's spread of hours exceeded ten hours; (d) Defendants' failures to issue wage notices in violation of NYLL § 195(1)(a); and (e) Defendants' failures to furnish each Plaintiff with a statement, with every payment of wages to the Plaintiff, listing the information pertaining to that payment and to the employer, the furnishing of which was/is required by NYLL § 195(3).

2. Plaintiffs' causes of action arise under FLSA Section 16(b), 29 U.S.C. § 216(b), NYLL §§ 198(1-a), 198(1-b), 198[(1-c)], 198(1-d), 663(1), and the Declaratory Judgment Act, 28 U.S.C. 2201-2202.

3. This Court has jurisdiction of Plaintiffs' federal causes of action pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction of Plaintiffs' causes of action under New York law pursuant to 28 U.S.C. § 1367 because the state claims are so related to the FLSA claims that they form part of the same case or controversy within the meaning of Article III of the U.S. Constitution.

4. Venue lies in the Southern District of New York because (a) a substantial part of the events and omissions giving rise to Plaintiffs' claims, including but not limited to Plaintiffs' performance of work for Defendants and Defendants' failures to pay Plaintiffs the wages and overtime compensation due to them by law.

PARTIES

Plaintiffs

5. LEONARDO CUAHIZO was employed by Defendants NIYAZOV, HEALTH SOURCE PHARMACY II, INC., and HEALTH SOURCE PHARMACY III B, INC. beginning in or about June 2009 through on or about September 14, 2016.

6. FELIPE DE JESUS RAMIREZ was employed by Defendants NIYAZOV, HEALTH SOURCE PHARMACY III B, INC., and HEALTH SOURCE PHARMACY, INC. beginning in or about June 2013 through on or about September 14, 2016.

7. HECTOR FLORES PUEBLA was employed by Defendants NIYAZOV, HEALTH SOURCE PHARMACY II, INC, and HEALTH SOURCE PHARACY III B, INC. beginning in or about May 2013 through on or about September 22, 2016.

8. MARIA CUAHIZO was employed by Defendants NIYAZOV, HEALTH SOURCE PHARMACY, INC, and HEALTH SOURCE PHARMACY II, INC. beginning on or about July 1, 2011 through on or about September 12, 2011.

9. Plaintiffs' responsibilities included stocking merchandise, making deliveries, and operating the cash register.

10. At all times during which each Plaintiff worked for Defendants, each Plaintiff was an employee within the meaning of FLSA Section 3(e), 29 U.S.C. § 203(e), who was engaged in commerce or in the production off goods for commerce, and was employed by Defendants within the meaning of FLSA Section 3(g), 29 U.S.C. § 203(g). At all such times, each Plaintiff was also an employee within the meaning of NYLL §§ 190(2) and 651(5) and was employed and permitted to work by Defendants within the meaning of NYLL §§ 2(7) and 651(5).

Defendants

11. On information and belief, BORIS NIYAZOV was and remains the principal owner and officer of HEALTH SOURCE PHARMACY II, INC., HEALTH SOURCE PHARMACY III B, INC., and HEALTH SOURCE PHARMACY, INC., the principal director of its board of directors and the manager of the Health Source pharmacies located 120 E. 34th

Street, New York NY 10016, 1000 First Avenue, New York, NY 10022, and 1302 Second Avenue, New York, NY 10065.

12. At all times relevant herein, NIYAZOV was an employer within the meaning of FLSA Section 3(d), 29 U.S.C. § 203(d), employed each Plaintiff within the meaning of FLSA Section 3(g), 29 U.S.C. § 203(g), was an employer within the meaning of NYLL §§ 190(3) and 651(6) and employed each Plaintiff and permitted each Plaintiff to work within the meaning of NYLL §§ 2(7) and 651(5).

13. NIYAZOV hired each Plaintiff to work at Health Source pharmacies. At all times relevant herein, he had the authority to fire each Plaintiff, determine the days and hours worked by each Plaintiff, the tasks performed by each Plaintiff, the rate(s) at which each Plaintiff was compensated and the amount(s) of compensation paid to each Plaintiff, supervise Plaintiffs' performance of work and maintain day-to-day operational control of the Health Source pharmacies.

14. At all relevant times, HEALTH SOURCE PHARMACY II, INC. was a for-profit corporation incorporated in the State of New York which owned and operated Health Source Pharmacy located at 120 East 34th Street, New York, New York 10016. At all times relevant herein, Health Source Pharmacy was an enterprise within the meaning of 29 U.S.C. §203(r) that engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §203 (s)(1), in that it (a) has had an annual gross volume of sales of not less than \$500,000.00 at all times relevant to this action; and (b) has had employees working with and/or selling goods and materials that have been shipped into this state from other states.

15. At all times relevant herein, HEALTH SOURCE PHARMACY II, INC. was an employer within the meaning of FLSA Section 3(d), 29 U.S.C. § 203(d), employed Plaintiffs

LEONARDO CUAHIZO, PUEBLA, and MARIA CUAHIZO within the meaning of FLSA Section 3(g), 29 U.S.C. § 203(g), was an employer within the meaning of NYLL §§ 190(3) and 651(6) and employed each Plaintiff and permitted Plaintiffs LEONARDO CUAHIZO, PUEBLA, and MARIA CUAHIZO to work within the meaning of NYLL §§ 2(7) and 651(5). HEALTH SOURCE PHARMACY II, INC. hired Plaintiffs LEONARDO CUAHIZO, PUEBLA, and MARIA CUAHIZO to work at Health Source Pharmacy. HEALTH SOURCE PHARMACY II, INC. (a) had the power to fire Plaintiffs LEONARDO CUAHIZO, PUEBLA, and MARIA CUAHIZO, (b) determined the days and hours they worked, the tasks they performed, the rate(s) at which they were compensated and the amount(s) of compensation paid to them, and (c) supervised their work.

16. At all relevant times, HEALTH SOURCE PHARMACY III B, INC. was a for-profit corporation incorporated in the State of New York which, has owned and operated Health Source Pharmacy located at 1000 First Avenue, New York, New York 10022. At all times relevant herein, Health Source Pharmacy was an enterprise within the meaning of 29 U.S.C. §203(r) that engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §203 (s)(1), in that it (a) has had an annual gross volume of sales of not less than \$500,000.00 at all times relevant to this action; and (b) has had employees working with and/or selling goods and materials that have been shipped into this state from other states.

17. At all times relevant herein, HEALTH SOURCE PHARMACY III B, INC. was/is an employer within the meaning of FLSA Section 3(d), 29 U.S.C. § 203(d), employed Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and PUEBLA within the meaning of FLSA Section 3(g), 29 U.S.C. § 203(g), was an employer within the meaning of NYLL §§ 190(3) and 651(6) and employed Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and PUEBLA and

permitted them to work within the meaning of NYLL §§ 2(7) and 651(5). HEALTH SOURCE PHARMACY III B, INC. hired Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and PUEBLA to work at Health Source Pharmacy. HEALTH SOURCE PHARMACY III B, INC. (a) had the power to fire Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and PUEBLA, (b) determined the days and hours worked by them, the tasks performed by Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and PUEBLA, the rate(s) at which they were compensated and the amount(s) of compensation paid to them, and (c) supervised their work.

18. At all relevant times, HEALTH SOURCE PHARMACY, INC. was a for-profit corporation incorporated in the State of New York which, has owned and operated Health Source Pharmacy located at 1302 Second Avenue, New York, New York 10065. At all times relevant herein, Health Source Pharmacy was an enterprise within the meaning of 29 U.S.C. §203(r) that engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §203 (s)(1), in that it (a) has had an annual gross volume of sales of not less than \$500,000.00 at all times relevant to this action; and (b) has had employees working with and/or selling goods and materials that have been shipped into this state from other states.

19. At all times relevant herein, HEALTH SOURCE PHARMACY, INC. was an employer within the meaning of FLSA Section 3(d), 29 U.S.C. § 203(d), employed Plaintiffs RAMIREZ and MARIA CUAHIZO within the meaning of FLSA Section 3(g), 29 U.S.C. § 203(g), was an employer within the meaning of NYLL §§ 190(3) and 651(6) and employed Plaintiffs RAMIREZ and MARIA CUAHIZO and permitted them to work within the meaning of NYLL §§ 2(7) and 651(5). HEALTH SOURCE PHARMACY, INC. hired Plaintiffs RAMIREZ and MARIA CUAHIZO to work at Health Source Pharmacy. HEALTH SOURCE PHARMACY, INC. (a) had the power to fire Plaintiffs RAMIREZ and MARIA CUAHIZO, (b)

determined the days and hours they worked, the tasks performed by Plaintiffs RAMIREZ and MARIA CUAHIZO, the rate(s) at which Plaintiffs RAMIREZ and MARIA CUAHIZO were compensated and the amount(s) of compensation paid to them, and (c) supervised their work.

FIRST CAUSE OF ACTION (FLSA OVERTIME COMPENSATION)
(AS TO ALL PLAINTIFFS)

20. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

21. Each Plaintiff regularly worked more than forty hours in each week during which he was/is employed by Defendants.

22. LEONARDO CUAHIZO worked for Defendants for approximately 66 hours per week from in or about June 2009 through in or about June 2013, approximately 73 hours from July 2013 through August 2014, and on average 62.5 hours per week from in or about September 2014 through on or about September 14, 2016.

23. RAMIREZ worked for Defendants for approximately 63 hours per week from in or about June 2013 through on or about January 1, 2015. From on or about January 2, 2015 through on or about September 14, 2016, RAMIREZ worked for Defendants for approximately 60 hours per week.

24. FLORES PUEBLA worked for Defendants for approximately 54 hours per week from May 3, 2013 through on or about April 30, 2015. From May 1, 2015 through on or about September 22, 2016, FLORES PUEBLA worked for Defendants on average 61.5 hours per week.

25. MARIA CUAHIZO worked for Defendants for approximately 58 hours per week from on or about July 1, 2011 through on or about September 12, 2011.

26. In each week in which each Plaintiff was employed by Defendants for more than forty hours, Defendants failed and continue to fail to compensate that Plaintiff for overtime worked at one and one-half times the Plaintiff's regular rate of pay for each hour worked in that week in excess of forty hours.

27. Defendants thereby violated and continue to violate § 207(a). Said violations of 29 U.S.C. § 207(a) were and continue to be willful within the meaning of 29 U.S.C. § 255(a).

SECOND CAUSE OF ACTION (NYLL OVERTIME COMPENSATION)
(AS TO ALL PLAINTIFFS)

28. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

29. In each week in which each Plaintiff was employed by Defendants for more than forty hours, Defendants failed and continue to fail to compensate that Plaintiff for overtime worked at one and one-half times the Plaintiff's regular rate of pay for each hour worked in that week in excess of forty hours.

30. Defendants thereby violated and continue to violate 12 NYCRR § 142-2.2. Said violations of § 142-2.2 were and continue to be willful within the meaning of NYLL § 663(1).

THIRD CAUSE OF ACTION (NYLL MINIMUM WAGE)
(AS TO PLAINTIFFS RAMIREZ and FLORES PUEBLA)

31. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

32. Beginning on July 24, 2009 through December 30, 2013, NYLL § 652(1) required every employer, including Defendants, to pay each employee, including each Plaintiff then employed, wages at not less than \$7.25 per hour. Beginning on December 31, 2013 through

December 30, 2014, NYLL § 652(1) has required every employer, including Defendants, to pay each employee, including each Plaintiff then employed, wages at not less than \$8.00 per hour. Beginning on December 31, 2014 through December 30, 2015, NYLL § 652(1) has required every employer, including Defendants, to pay each employee, including each Plaintiff then employed, wages at not less than \$8.75 per hour. Beginning on December 31, 2015 through December 30, 2016, NYLL § 652(1) has required every employer, including Defendants, to pay each employee, including each Plaintiff then employed, wages at not less than \$9.00 per hour.

33. From in or about June 2013 through on or about May 31, 2014, RAMIREZ was paid \$7.25 per hour. From on or about June 1, 2014 through on or about January 31, 2015, RAMIREZ was paid \$7.50 per hour. From on or about February 1, 2015 through on or about July 1, 2016, RAMIREZ was paid \$8.50 per hour. From on or about July 2, 2016 through on or about September 14, 2016, RAMIREZ was paid \$9.00 per hour.

34. From on or about May 3, 2013 through on or about June 30, 2013, FLORES PUEBLA was paid \$7.50 per hour. From on or about July 1, 2013 through on or about June 30, 2014, FLORES PUEBLA was paid \$8.00 per hour. For on or about July 1, 2015 through on or about April 30, 2016, FLORES PUEBLA was paid \$9.00 per hour. From May 1, 2016 through on or about September 22, 2016, FLORES PUEBLA was paid \$10.00 per hour.

35. From on or about October 2011 through on or about December 2011, MARIA CUAHIZO was paid \$7.25 per hour.

36. Defendants thereby violated and continue to violate NYLL § 652(1). Said violations of § 652(1) were and continue to be willful within the meaning of NYLL § 663(1).

37. At no time during which one or more Plaintiffs worked/works at Health Source pharmacies did either Defendant post in a conspicuous place in said establishment the

notice issued by the New York Department of Labor summarizing the minimum wage provisions of the New York Labor Law and regulations promulgated thereunder.

FOURTH CAUSE OF ACTION (NYLL SPREAD OF HOURS)
(AS TO PLAINTIFFS L. CUAHIZO, RAMIREZ, and FLORES PUEBLA)

38. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

39. Throughout periods of their employment by Defendants, Plaintiffs LEONARDO CUAHIZO, RAMIREZ, and FLORES PUEBLA regularly worked and days in which their spread of hours exceeded ten hours. However, on every such occasion, Defendants failed to pay to the Plaintiffs one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage otherwise required by 12 NYCRR Part 142.

40. Defendants thereby violated 12 NYCRR § 142-2.4(a). Said violations of § 142-2.4(a) were willful within the meaning of NYLL § 663(1).

FIFTH CAUSE OF ACTION (NYLL IMPROPER DEDUCTIONS)
(AS TO PLAINTIFFS LEONARDO CUAHIZO and FELIPE DE JESUS RAMIREZ)

41. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

42. On or about September 14, 2016, DEFENDANTS deducted \$100 from the final pay of Plaintiffs LEONARDO CUAHIZO and FELIPE DE JESUS RAMIREZ due to an alleged \$100 counterfeit bill that was found in the cash register.

43. Such deductions are not authorized by any law or regulation, were not expressly authorized in by any Plaintiff and were not for the recovery of an overpayment of wages or a repayment of wages advanced.

44. Defendants' aforesaid deductions from Plaintiffs' wages constituted deductions prohibited by and in violation of NYLL§193.

45. Said violations were willful within the meaning of NYLL§198 (1-a).

SIXTH CAUSE OF ACTION (NYLL RETALIATION)
(AS TO ALL PLAINTIFFS)

46. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

47. On October 4, 2016, Plaintiffs' attorneys sent a demand letter to Defendant NIYAZOV advising him that the Plaintiffs had retained Catholic Migration Services to represent them regarding their claims for unpaid wages against Defendants.

48. On October 12, 2016, Stephen Hans contacted Plaintiffs' counsel to advise her that Defendants had contacted him for legal representation in response to the demand letter. Later that day, Plaintiffs' attorneys sent a spreadsheet of its calculations of wages owed to Plaintiffs to Hans.

49. On or about October 21, 2016, an employee of Defendants' named "Nick" visited FLORES PUEBLA at his current place of employment and advised him that NIYAZOV indicated that if Plaintiffs proceed with their claims, NIYAZOV would report them to immigration. "Nick" also advised FLORES PUEBLA that NIYAZOV knew where each Plaintiff was currently working and that NIYAZOV threatened to speak to Plaintiffs' current employers.

50. Later that day, on or about October 21, 2016, another employee of Defendants' named "Wildia" called FLORES PUEBLA and advised him that NIYAZOV indicated that if Plaintiffs proceed with their claims, NIYAZOV would report them to immigration.

SEVENTH CAUSE OF ACTION (NYLL NOTICE REQUIREMENTS)
(AS TO ALL PLAINTIFFS)

51. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

52. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

53. Defendants never provided Plaintiffs, on or before February 1, 2012 nor on or before February 1, 2013, nor on or before February 1, 2014, written notice containing the information required by New York Labor Law § 195(1)(a)(amended on December 29, 2014).

54. Defendants' violations continued throughout Plaintiffs' employment.

55. Due to Defendants' violations, Plaintiffs are entitled to recover statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the court deems necessary and appropriate.

EIGHTH CAUSE OF ACTION (NYLL STATEMENT REQUIREMENT)
(AS TO ALL PLAINTIFFS)

56. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

57. Throughout Plaintiffs' respective employments by Defendants, Defendants failed to furnish to any Plaintiff a statement, with every payment of wages, a statement listing the following: the dates of work covered by that payment of wages; the name of the employee; the name of each employer; the address and phone number of each employer; the rate(s) of pay and basis thereof; gross wages; deductions; allowances, if any, claimed as part of the New York

minimum wage; and net wages; the overtime rates of pay; the number of regular hours worked, and the number of overtime hours worked.

58. Defendants thereby violated NYLL § 195(3).

RELIEF

WHEREFORE, Plaintiffs hereby seek the following relief:

- A. Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid minimum wages and overtime compensation due to the Plaintiffs pursuant to the FLSA and an additional equal amount as liquidated damages;
- B. Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid minimum wages and overtime compensation due to the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award as liquidated damages in the amount of 100% of the unpaid minimum wages and overtime compensation due to the Plaintiffs under New York law, except in the amount of 25% of the unpaid minimum wages and overtime compensation due for work performed prior to November 24, 2009;
- C. Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid spread-of-hours pay and the unlawful deductions due to the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award as liquidated damages in the amount of 100% of the unpaid spread-of-hours pay due to the Plaintiffs under New York law, except in the amount of 25% of the unpaid spread-of-hours pay due for work performed prior to November 24, 2009;
- D. Awarding Plaintiffs damages due to notice violations under the NYLL;
- E. Awarding Plaintiffs all appropriate relief including, but not limited to, damages

and reasonable attorney's fees due to Defendants' violations of NYLL § 215(2).

- F. Pre-judgment interest;
- G. Reasonable attorneys' fees and costs of the action; and
- H. Such other relief as this Court shall deem just and proper.

Respectfully submitted,

CATHOLIC MIGRATION SERVICES



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