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**CV 04 895**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**BROOKLYN OFFICE**

----- X  
LINDA JACOBS, JEFFREY JONES,  
WENDY SLAUGHTER,

Individually and On Behalf of All Others Similarly  
Situated,

03 Civ.

**TRACK, J.**

Plaintiffs,

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

- against -

THE NEW YORK FOUNDLING HOSPITAL,

Defendant.  
----- X

Plaintiffs Linda Jacobs (hereinafter "Jacobs"), Jeffrey Jones (hereinafter "Jones") and Wendy Slaughter (hereinafter "Slaughter"), individually and on behalf of all others similarly situated, by their attorneys, Levy Davis & Maher, LLP, and the Law Office of David N. Abrams, complain of defendant, The New York Foundling Hospital (hereinafter "NYFH"), as follows:

### PRELIMINARY STATEMENT

1. Plaintiffs complain on behalf of themselves and other current and former employees of defendant who elect to opt into this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 216(b) ("FLSA"), that they are owed back wages from defendant for overtime work for which they did not receive overtime premium pay pursuant to the FLSA, 29 U.S.C. §§ 201 et seq. the New York Minimum Wage Act ("NYMWA"), N.Y. Labor Law §§ 650 et seq. Plaintiffs further complain that defendant deprived them of compensation for certain hours worked in violation of N.Y. Labor Law Article 6.

### JURISDICTION AND VENUE

2. Plaintiffs invoke the jurisdiction of this Court pursuant to (i) the Fair Labor Standards Act, 29 U.S.C. § 216; (ii) the Declaratory Judgment Statute, 28 U.S.C. § 2201; and (iii) 28 U.S.C. 1367(a), in that the state and federal claims arise from a common nucleus of operative fact such that they are so related that they form part of the same case or controversy under Article III of the United States Constitution.

3. The venue of this action is proper because (i) the defendant has offices, conducts business and can be found in the Eastern District of New York and (ii) plaintiffs performed work, labor and services at premises maintained by the defendants in the Eastern District of New York, i.e., a substantial part of the events or omissions giving rise to the claims occurred within the Eastern District of New York.

**PARTIES**

4. Upon information and belief, NYFH is a domestic not for profit corporation organized under the laws of the State of New York. At all relevant times, NYFH was and is in the business of providing social services to children and families. NYFH maintains its principal place of business at 590 Avenue of the Americas in New York, New York.

5. Defendant is in an industry affecting commerce within the meaning of 29 U.S.C. § 203(b).

6. Jacobs is a natural person, currently residing at 3719 Avenue L in the County of Kings, City and State of New York. For approximately three years, until the termination of her employment in or around October 2003, Jacobs was employed at defendant's Long Island City facility, located at 11-43 47th Avenue, (hereinafter the "Queens Service Center") as a caseworker.

7. Jones is a natural person, currently residing at 7501 Ridge Boulevard in the County of Kings, City and State of New York. For approximately one and one-half years, until his resignation in or about February 2004, Jones was employed at the Queens Service Center as a caseworker.

8. Slaughter is a natural person, currently residing at 849 Flushing Avenue in the County of Kings, City and State of New York. For approximately two years, until the termination of her employment in or around September 2003, Jacobs was employed at defendant's Queens Service Center as a caseworker.

9. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to 29 U.S.C. § 216(b). Persons similarly situated are those who are and/or

were employed by defendant at any time between March 4, 2001 and the present (the "Collective Action Period") within the meaning of 29 U.S.C. § 203(c)(1).

### FACTUAL ALLEGATIONS

10. Plaintiffs were engaged in commerce within the meaning of 29 U.S.C. § 203(b), in that they worked for defendants as caseworkers.

11. Defendant was, at all relevant times, in an industry affecting commerce within the meaning of 29 U.S.C. § 203(b).

12. Plaintiffs and their similarly situated coworkers are and have been, at all relevant times, compensated on an hourly basis.

13. Plaintiffs and their similarly situated coworkers regularly work and/or worked in excess of 40 hours in the workweek. However, plaintiffs were not paid overtime premium pay for all work hours in excess of 40 hours in the workweek.

14. Plaintiffs were not, at any relevant time, exempt from the overtime premium pay requirements of the FLSA and the NYMWA.

15. At all relevant times, plaintiffs and their similarly situated coworkers were subject to defendant's overtime policy (hereinafter the "Policy"), which provides that

Overtime is permitted only in exceptional circumstances and emergencies. An employce shall not work overtime without the authorization of the Supervisor and/or Director. Employees authorized to work overtime will be compensated by equivalent time off.

. . . . Compensatory time, for overtime, must be taken within ninety days from date of accrual or be forfeited.

16. Upon information and belief, in or about 2003, NYFH unilaterally revised the

policy set forth above to the extent that, from that date, NYFH required that compensatory time for overtime be taken within thirty days from date of accrual or be forfeited.

17. NYFH represented to the district court in Bancz v. New York Foundling Hospital, 98 Civ. 518 (GEL) (S.D.N.Y.) that the Policy hereinabove had been in force since 1991, and that, in 1995, NYFH had discharged its obligation to plaintiff therein by tendering a sum of money as reimbursement for the compensatory time that he had accrued.

18. Upon information and belief, the Policy is applied uniformly to all or substantially all employees of NYFH.

19. Upon information and belief, defendant in conspiracy with plaintiffs' supervisors has coerced plaintiffs into signing off on time sheets that are inaccurate and not reflective of the total hours worked by plaintiffs.

**AS AND FOR PLAINTIFFS' FIRST CAUSE OF ACTION**

20. Plaintiffs incorporate by reference each and every allegation made in paragraphs 1 through 19 of this Complaint.

21. Defendant has failed and refused to pay to Plaintiffs and their similarly situated co-workers overtime premium pay under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 et seq.

**AS AND FOR PLAINTIFFS' SECOND CAUSE OF ACTION**

22. Plaintiffs incorporate by reference each and every allegation made in paragraphs 1 through 21 of this Complaint.

23. The failure of defendant to properly compensate Plaintiffs and their similarly situated co-workers as required by the Fair Labor Standards Act was willful.

**AS AND FOR PLAINTIFFS' THIRD CAUSE OF ACTION**

24. Plaintiffs incorporate by reference each and every allegation made in paragraphs 1 through 23 of this Complaint.

25. Defendant, having purported to work a forfeiture of plaintiffs' entitlement to pay for accrued unused compensatory time, is liable for its failure to pay earned wages under N.Y. Labor Law Article 6.

**AS AND FOR PLAINTIFFS' FOURTH CAUSE OF ACTION**

26. Plaintiffs incorporate by reference each and every allegation made in paragraphs 1 through 25 of this Complaint.

27. Defendant's failure and refusal to compensate Plaintiffs and their similarly situated co-workers as required by Article 6 of the New York Labor Law was willful.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment:

1. Declaring defendant's conduct as described herein to be unlawful under the FLSA;

2. Declaring defendant's conduct as described herein to be unlawful under the New York Minimum Labor Law;

3. Directing defendant to pay overtime premium pay to Plaintiffs and to their similarly situated co-workers under the FLSA;
4. Directing defendant to pay liquidated damages to Plaintiffs and their similarly situated co-workers under the FLSA;
5. Directing defendant to pay plaintiffs for all hours worked under the New York Labor Law;
6. Directing defendant to pay liquidated damages under the New York Labor Law;
7. Granting a permanent injunction enjoining NYFH and its owners, officers, management personnel, employees, agents, attorneys, successors and assigns and those acting in concert therewith from any conduct violating the rights of the Plaintiffs as secured by the FLSA and the New York Labor Law;
8. Awarding the Plaintiffs reasonable attorneys' fees and costs, including the fees and costs of experts, incurred in prosecuting this action;
9. Directing payment by defendants of pre-judgment interest; and
10. Granting such other and further relief as this Court deems necessary and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York  
March 2, 2004

Levy Davis & Maher, LLP

By:  \_\_\_\_\_

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