

OUTTEN & GOLDEN LLP
 Justin M. Swartz
 Rachel Bien
 Seth M. Marnin
 3 Park Avenue, 29th Floor
 New York, New York 10016
 Telephone: (212) 245-1000

SHAVITZ LAW GROUP, P.A.

Gregg Shavitz*
 Hal Anderson*
 Keith M. Stern*
 1515 S. Federal Highway, Suite 4-4
 Boca Raton, Florida 33432
 Telephone: (456) 447-8888
 *admitted pro hac vice

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U.S. DISTRICT COURT
 S.D.N.Y.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK**

KYLE PIPPINS, JAMIE SCHINDLER, and
 EDWARD LAMBERT, individually and on
 behalf of all others similarly situated,

Plaintiffs,

v.

KPMG LLP,

Defendant.

No. 11 Civ. 0377 (CM)(JLC)

**FIRST AMENDED CLASS
 ACTION COMPLAINT**

Jury Trial Demanded

Plaintiffs Kyle Pippins, Jamie Schindler, and Edward Lambert (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, by their attorneys, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. Defendant KPMG LLP ("KPMG" or "Defendant") is an audit, tax, and advisory firm with 87 offices nationwide and more than 23,000 employees. It is the U.S.-member firm of KPMG International, which works in 144 countries and had combined revenues of over \$20 billion in 2009.

2. Plaintiffs Kyle Pippins (“Pippins”), Jamie Schindler (“Schindler”), and Edward Lambert (“Lambert”) worked for KPMG as Audit Associates and/or as Audit Associate Seconds (together, “Audit Associates”), an entry-level job that requires no advanced level training and primarily involves performance of routine duties such as photocopying, data entry, and basic review, inventory, and comparison of client documents and records. Audit Associates work as the lowest-level members of the teams tasked with auditing KPMG’s clients’ records.

3. Throughout the relevant period, it has been KPMG’s nationwide policy to deprive its Audit Associates of earned overtime wages. In order to avoid paying Audit Associates overtime premiums for hours they worked in excess of 40 in a workweek, KPMG has uniformly misclassified them as exempt from federal overtime protections. The primary duties of these employees do not fall under any exemption. Audit Associates perform their duties under the close supervision of more senior KPMG employees and exercise little, or no, independent judgment and discretion. Audit Associates’ primary duties do not vary significantly from one KPMG location to another.

4. Audit Associates are regularly scheduled for, and regularly work in excess of 40 hours per week, sometimes as many as 65 hours or more, regardless of the KPMG customer to which they are assigned.

5. By the conduct described in this First Amended Class Action Complaint, Defendant has violated the Fair Labor Standards Act and the New York Labor Law by failing to pay Audit Associates, including Plaintiffs, overtime as required by those laws. These violations arose out of Defendant’s uniform company-wide policies and its pattern or practice of violating wage and hour laws.

6. Plaintiffs bring this action on behalf of themselves and similarly situated current

and former KPMG Audit Associates whom KPMG classified as exempt and who elect to opt-in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the overtime wage provisions of the FLSA.

7. Plaintiff Lambert brings this action on behalf of himself and all similarly situated current and former Audit Associates in New York as a class action under Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations (collectively, the “NYLL”).

THE PARTIES

Plaintiffs

Kyle Pippins

8. Plaintiff Pippins is an adult individual who is a resident of Dallas, Texas.

9. Pippins was employed by Defendant as an Audit Associate in Texas from approximately September 2007 through approximately March 2009.

10. Prior to becoming an Audit Associate, Pippins participated in KPMG’s 12-week internship program.

11. Throughout the relevant period, Pippins was a covered employee within the meaning of the FLSA.

12. Pippins has filed a written consent to join this case.

Jamie Schindler

13. Plaintiff Schindler is an adult individual who is a resident of Pembroke Pines, Florida.

14. Schindler was employed by Defendant as an Audit Associate in Florida from

approximately August 2008 through approximately April 2009.

15. Prior to becoming an Audit Associate, Schindler participated in KPMG's 12-week internship program.

16. Throughout the relevant period, Schindler was a covered employee within the meaning of the FLSA.

17. Schindler has filed a written consent to join this case.

Edward Lambert

18. Plaintiff Lambert is an adult individual who is a resident of Phoenix, Arizona.

19. Lambert was employed by Defendant as an Audit Associate in New York between approximately August 2008 and approximately April 2009. Lambert also worked in New Jersey at times during this period.

20. Throughout the relevant period, Lambert was a covered employee within the meaning of the FLSA and NYLL.

21. Lambert has filed a written consent to join this case.

Defendant

22. Throughout the relevant period, KPMG maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including the payroll and other employment practices that applied to them.

23. KPMG is a Delaware limited liability partnership with its headquarters located at 345 Park Avenue in New York City.

24. KPMG operates 87 offices throughout the United States.

25. KPMG employs 16,459 individuals in the United States.

26. Upon information and belief, between 2009 and 2010, KPMG recruited

approximately 3,700 recent graduates, which it refers to as “campus hires.”

27. Upon information and belief, most campus hires become Audit Associates.

28. Throughout the relevant period, KPMG employed Plaintiffs and similarly situated employees within the meaning of the FLSA.

29. KPMG is an employer within the meaning of the FLSA.

30. KPMG is the entity printed on Plaintiffs’ paystubs.

31. KPMG applies the same employment policies, practices, and procedures, including with respect to payment of overtime, to all Audit Associates throughout the United States.

32. KPMG has classified all Audit Associates as exempt from the overtime requirements of state and federal law.

JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over Plaintiffs’ FLSA claim pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over the NYLL claim pursuant to 28 U.S.C. §§ 1332 (the Class Action Fairness Act) and 1367 (supplemental jurisdiction).

34. Plaintiff Lambert’s NYLL claim is so closely related to his claim under the Fair Labor Standards Act that they form part of the same case or controversy under Article III of the United States Constitution.

35. The Court also has jurisdiction over Plaintiffs’ claims under the FLSA pursuant to 29 U.S.C. § 216(b).

36. The amount in controversy in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

37. At least one member of the proposed class is a citizen of a state different from that

of the Defendant.

38. Defendant is subject to personal jurisdiction in New York.

39. Defendant's headquarters is located in New York City.

40. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

41. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because Defendant's headquarters are located in that district and, upon information and belief, a substantial part of the events or omissions giving rise to the claim occurred in that district.

COLLECTIVE ACTION ALLEGATIONS

42. Plaintiffs bring the First Cause of Action, FLSA claim, on behalf of themselves and all similarly situated persons who have worked for Defendant as "Audit Associates" or "Audit Associate Seconds" between January 19, 2008 and January 19, 2011, whom Defendant classified as exempt, and who elect to opt-in to this action (the "FLSA Collective").

43. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the FLSA Collective. The FLSA claim in this lawsuit should be adjudicated as a collective action. Upon information and belief, there are many similarly situated current and former employees of Defendant who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

44. Plaintiff Lambert brings the Second Cause of Action, NYLL claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class consisting of all persons who have worked for Defendant as “Audit Associates” in New York between March 8, 2005, and the date of final judgment in this matter (the “New York Class”).

45. Excluded from the New York Class are 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; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

46. The persons in the New York Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is not known to Plaintiff, the facts on which the calculation of that number can be based are presently within the sole control of Defendant.

47. Upon information and belief, the size of the New York Class is at least 50 employees.

48. Defendant acted or refused to act on grounds generally applicable to the New York Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the New York Class as a whole.

49. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3). There are questions of law and fact common to the New York Class that predominate over any questions solely affecting individual members of the New York Class, including but not limited to:

- a. whether Defendant failed to keep true and accurate time records for all hours worked by Plaintiff and the New York Class;
- b. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- c. whether Defendant failed and/or refused to pay Plaintiff and the New York Class overtime pay for hours worked in excess of 40 hours per workweek as required by the NYLL;
- d. the nature and extent of the class-wide injury and the appropriate measure of damages for the New York Class;
- e. whether Defendant has a policy of misclassifying workers as exempt from coverage of the overtime provisions of the NYLL; and
- f. whether Defendant's policy of misclassifying workers was done willfully or with reckless disregard of the law.

50. The claims of Plaintiff Lambert are typical of the claims of the New York Class he seeks to represent. Plaintiff and the New York Class Members work or have worked for Defendant in New York and have been subjected to its policy and pattern or practice of failing to pay overtime wages for hours worked in excess of 40 hours per week. Defendant acted and refused to act on grounds generally applicable to the New York Class, thereby making declaratory relief with respect to the New York Class appropriate.

51. Plaintiff Lambert will fairly and adequately represent and protect the interests of the New York Class. Plaintiff understands that, as a class representative, he assumes a fiduciary responsibility to the New York Class to represent its interests fairly and adequately. Plaintiff recognizes that as a class representative, he must represent and consider the interests of the New

York Class just as he would represent and consider his own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, he must not favor his own interests over those of the New York Class. Plaintiff recognizes that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the New York Class. Plaintiff understands that in order to provide adequate representation, he must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in his possession, and testify, if required, in a deposition and in trial.

52. Plaintiff Lambert has retained counsel competent and experienced in complex class action employment litigation.

53. A class action is superior to other available methods for the fair and efficient adjudication of this litigation – particularly in the context of wage litigation like the present action, where an individual plaintiff may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The members of the New York Class have been damaged and are entitled to recovery as a result of Defendant’s common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of the New York Class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant’s practices.

CLASS AND COLLECTIVE FACTUAL ALLEGATIONS

54. All of the work that Plaintiffs and the FLSA Collective and New York Class members (together, "Class Members") performed was assigned by Defendant and/or Defendant has been aware of all of the work that Plaintiffs and the Class Members have performed.

55. Upon information and belief, Defendant's business is a centralized, top-down operation controlled by Defendant's headquarters in New York City.

56. During the relevant period, it has been Defendant's nationwide policy and pattern or practice to classify all Audit Associates as exempt from coverage of the overtime provisions of the FLSA and NYLL.

57. Defendant made the decision to classify all Audit Associates as exempt.

58. Defendant paid all Audit Associates a weekly wage and failed to pay them for any hours they worked in excess of 40 hours in a workweek.

59. As part of its regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA and NYLL. This policy and pattern or practice includes but is not limited to:

- a. willfully failing to record all of the time that Plaintiffs and the Class Members have worked for the benefit of the Defendant;
- b. willfully misclassifying the Plaintiffs and the Class Members as exempt from the requirements of the FLSA and NYLL; and
- c. willfully failing to pay Plaintiffs and the Class Members overtime wages for hours that they worked in excess of 40 hours per week.

60. Upon information and belief, Defendant's unlawful conduct described in this Complaint is pursuant to a corporate policy or practice of minimizing labor costs by violating the FLSA and NYLL.

61. During the relevant period, each KPMG audit team assigned to a particular KPMG customer was required to perform their duties in accordance with a budget that had been negotiated between KPMG and the customer.

62. When Audit Associates could not complete their duties within the time afforded by the budget, KPMG discouraged them from accurately recording all of the time they worked.

63. Defendant was aware, or should have been aware, that federal and state law required it to pay Plaintiffs and the Class Members an overtime premium for hours worked in excess of 40 per week.

64. Defendant was aware, or should have been aware, that Plaintiffs and the Class Members (a) primarily performed routine tasks, such as basic document and records reviews, data entry, and photocopying; (b) were closely supervised by more senior KPMG employees; and (c) exercised little or no discretion in the performance of their duties.

65. Notwithstanding their job duties, Defendant classified Plaintiffs and the Class Members as exempt employees in an attempt to avoid paying them overtime compensation.

66. Defendant's failure to pay Plaintiffs and the Class Members overtime wages for their work in excess of 40 hours per week was willful.

67. Defendant's unlawful conduct has been widespread, repeated, and consistent.

PLAINTIFFS' FACTUAL ALLEGATIONS

Pippins

68. Pippins' primary job duties were routine tasks, including basic client document

and records reviews, inventory counts, photocopying, and data entry.

69. Pippins regularly worked more than 40 hours per week and sometimes as many as 65 hours per week.

70. Pursuant to Defendant's policy and pattern or practice, Defendant classified Pippins as exempt from overtime pay requirements and willfully failed to pay him for hours he worked for Defendant's benefit in excess of 40 hours per workweek.

71. Pippins worked for Defendant first as an Audit Associate and later as an Audit Associate Second.

72. Pippins was not required to be certified as a Certified Public Accountant in order to perform the duties of either the Audit Associate or Audit Associate Second position.

73. Defendant failed to keep accurate records of Pippins' hours worked.

Schindler

74. Schindler's primary job duties were routine tasks, including basic client document and records reviews, inventory counts, photocopying, and data entry.

75. Schindler regularly worked more than 40 hours per week and sometimes as many as 65 hours per week.

76. Pursuant to Defendant's policy and pattern or practice, Defendant classified Schindler as exempt from overtime pay requirements and willfully failed to pay her for hours she worked for Defendant's benefit in excess of 40 hours per workweek.

77. Schindler worked for Defendant as an Audit Associate.

78. Schindler was not required to be certified as a Certified Public Accountant in order to perform the duties of the Audit Associate position.

79. Defendant failed to keep accurate records of Schindler's hours worked.

Lambert

80. Lambert's primary job duties were routine tasks, including basic client document and records reviews, inventory counts, photocopying, and data entry.

81. Lambert regularly worked more than 40 hours per week and sometimes as many as 65 hours per week.

82. Pursuant to Defendant's policy and pattern or practice, Defendant classified Lambert as exempt from overtime pay requirements and willfully failed to pay him for hours he worked for Defendant's benefit in excess of 40 hours per workweek.

83. Lambert worked for Defendant as an Audit Associate.

84. Lambert worked as an Audit Associate in New York and in New Jersey.

85. Lambert was not required to be certified as a Certified Public Accountant in order to perform the duties of the Audit Associate position.

86. Defendant failed to keep accurate records of Lambert's hours worked.

FIRST CAUSE OF ACTION
Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*
(On behalf of Plaintiffs and the FLSA Collective)

87. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

88. Defendant engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Complaint.

89. At all times relevant, Plaintiffs and the members of the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

90. The overtime wage provisions set forth in the FLSA apply to Defendant and

protect Plaintiffs and the FLSA Collective.

91. Defendant is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

92. At all times relevant, Plaintiffs and the members of the FLSA Collective were or have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

93. Defendant employed Plaintiffs and the members of the FLSA Collective as their employer.

94. Defendant failed to pay Plaintiffs and the members of the FLSA Collective the overtime wages to which they are entitled under the FLSA.

95. Defendant failed to keep accurate records of time worked by Plaintiffs and the members of the FLSA Collective.

96. Defendant's violations of the FLSA, as described in this First Amended Class Action Complaint, have been willful and intentional.

97. Defendant did not make a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and the members of the FLSA Collective.

98. Because Defendant's violations of the FLSA were willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

99. As a result of Defendant's violations of the FLSA, Plaintiffs and the members of the FLSA Collective have suffered damages by being denied overtime wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
New York Labor Law Article 19, §§ 650 *et seq.*
(On behalf of Plaintiff Lambert and the New York Class Members)

100. Plaintiff Lambert realleges and incorporates by reference all allegations in all preceding paragraphs.

101. Defendant engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this First Amended Class Action Complaint.

102. At all times relevant, Plaintiff Lambert and the members of the New York Class have been employees and Defendant has been an employer within the meaning of the NYLL.

103. Plaintiff Lambert and the members of the New York Class are covered by the NYLL.

104. KPMG employed Plaintiff Lambert and the New York Class Members as an employer and/or a joint employer.

105. Defendant failed to pay Plaintiff Lambert and the New York Class Members overtime wages to which they are entitled under NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. Part 142.

106. Defendant failed to pay Plaintiff Lambert and the New York Class Members overtime at a wage rate of one and one-half times their regular rate of pay.

107. Defendant failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff Lambert and the Class Members.

108. Defendant's violations of the NYLL, as described in this First Amended Class Action Complaint, have been willful and intentional.

109. Due to Defendant's violations of the NYLL, Plaintiff Lambert and the New York

Class Members are entitled to recover from Defendant unpaid overtime, reasonable attorneys' fees and costs of the action, liquidated damages, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, been employed by Defendant as an Audit Associate and/or Audit Associate Second and classified as exempt by Defendant. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Designation of Plaintiff Lambert as class representative of the New York class, and counsel of record as Class Counsel;

C. Unpaid overtime under the FLSA and NYLL;

D. Liquidated damages permitted by law under the FLSA and NYLL;

E. Issuance of a declaratory judgment that the practices complained of in this First Amended Class Action Complaint are unlawful under the NYLL;

F. Appropriate equitable and injunctive relief to remedy Defendant's violations, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;

G. Pre-Judgment and Post-Judgment interest, as provided by law;

H. Attorneys' fees and costs of suit, including expert fees; and

I. Such other injunctive and equitable relief as the Court may deem just 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
April 25, 2011

Respectfully submitted,
OUTTEN & GOLDEN LLP
By:



Justin M. Swartz

OUTTEN & GOLDEN LLP
Justin M. Swartz
Rachel Bien
Seth M. Marnin
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000

SHAVITZ LAW GROUP, P.A.
Gregg Shavitz*
Hal Anderson*
Keith M. Stern*
1515 S. Federal Highway, Suite 4-4
Boca Raton, Florida 33432
Telephone: (456) 447-8888
**admitted pro hac vice*

Attorneys for Plaintiffs and the Class and Collective