

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

LUKE D. GAYNE
CLERK

FREDI GARCIA

MISAIL GARCIA

JOSE SALVADOR VALLEDARES

VICTOR MANUEL MALEDONADO

DENIS AMADOR DIAZ

EMILIO SAGUERO

ALYES SCUL AR. GARCIA

08-1291

BERNANDEZ GARCIA

USA B.A.B.

ROBERTO SANCHEZ HERRERA

ROGAI GONZALEZ MARRINEZ

and SANCHEZ PARRA
on behalf of themselves and
all others similarly situated

Complaint

Collective Action

AUDUBON COMM
LLC,
AUDUBON-ALGIE
and CHARLES RHF

Defendants.

STATEMENT

I. PRELIMINARY

plaintiffs' imposition of forced labor, human

This lawsuit arises from the Defendants'

plaintiff immigrant reconstruction workers who

trafficking and unlawful underpayments on the part

New Orleans residential properties in the aftermath

worked to restore and maintain Defendants' New

Fee: 8350

DKR
CIR/Dep
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of Hurricane Katrina. The Plaintiffs state claims under the Victims of Trafficking Protection Act.

4. Upon information and belief, Defendants and/or their agents unlawfully retaliated against the Plaintiffs for having demanded payment of their wages under the Fair Labor

Standards Act. Upon information and belief, Defendants unlawfully provided a tin

enclosed in the detention of seven Plaintiffs. As a result of having sought encouraged and

payments, these seven gentlemen have been deprived of their liberty, detained from wage

II. JURISDICTION AND VENUE

5. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, the

Trafficking in Persons Act, and under the laws of the United States. This action arises under 18 U.S.C. § 1595,

and Fair Labor Standards Act. Persons) and under 29 U.S.C. §§ 201 et

management. U.S. maintains an office in this district and regularly conducts business within the

in this Court because Plaintiffs were victims of human trafficking. U.S. maintains an office in this Court

in the Eastern District of Louisiana. Venue is proper in this Court because Plaintiffs performed forced labor within

for which they allege because Plaintiffs performed work within the Eastern District of Louisiana

they fees. Venue is proper in this Court because Plaintiffs are entitled to unpaid minimum wages and/or overtime, penalties and attorney

city protected by the proper in this Court because Defendants retaliated against Plaintiffs for act

Fair Labor Standards Act within the Eastern District of Louisiana. The causes of action giving

rise to the litigation occurred within the Eastern District of Louisiana. 29 U.S.C. § 1395.

III. THE PARTIES

Plaintiff Fredt Garcia was employed by Defendant Omega from 2004 to 2007. Plaintiff Garcia was employed by

and Count IV claims under the Fair Labor Standards Act on behalf of himself and all others

similarly situated as authorized by 29 U.S.C. § 216(b). His FLSA consent form is attached here

as Exhibit

to this action. Plaintiff Denis Amador-Diaz was employed by Defendants during times relevant

to his Count III and Count IV claims under the Fair Labor Standards Act on behalf of himself and all others

similarly situated as authorized by 29 U.S.C. § 216(b). His FLSA consent form is attached hereto as Exhibit

3. During times relevant to this action, Plaintiff Emilio Salguero was employed by Defendants

as a manual laborer. Emilio Salguero asserts his Count III and Count IV claims under the Fair Labor Standards Act on behalf of himself and all others similarly situated as

relevant to this action. Plaintiff Reyes Asufal-Garcia was employed by Defendants during times

relevant to his Count III and Count IV claims under the Fair Labor Standards Act on behalf of himself and all others similarly situated

as authorized by 29 U.S.C. § 216(b). His FLSA consent form is attached hereto as Exhibit

4. During times relevant to this action, Plaintiff Cesar Hernandez-Garcia was employed by Defendants as a manual laborer. The Cesar Hernandez-Garcia asserts his Count

III and Count IV claims under the Fair Labor Standards Act on behalf of himself and all others

similarly situated as authorized by 29 U.S.C. § 216(b). His FLSA consent form is attached hereto

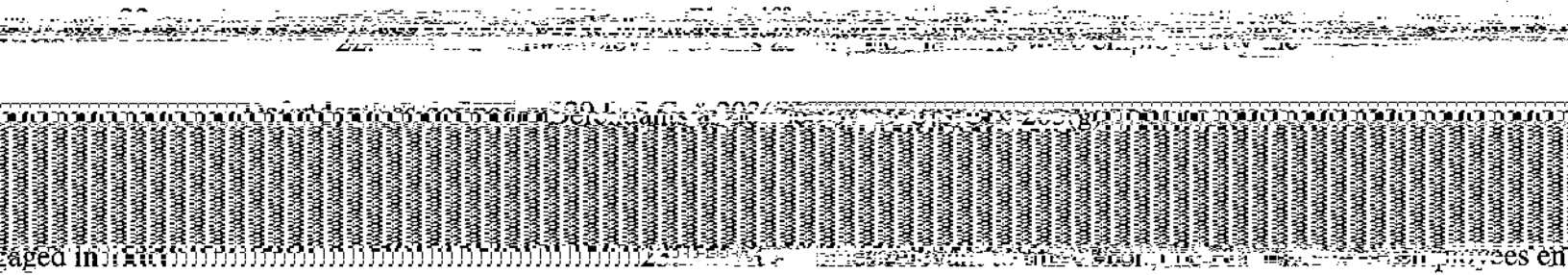
similarly situated as authorized by 29 U.S.C. § 216(b). His FLSA consent form is attached hereto as Exhibit 12.

20. During times relevant to this action, Plaintiff Santos Lara was employed by

Defendants as a manager of the Plaintiff's business. Plaintiff Santos Lara asserts his claim under the Fair Labor Standards Act on behalf of himself and all others similarly situated as authorized by _____ Fair Labor Standards Act.

At all times relevant to this action, the Plaintiffs were employees of the

Defendants as defined by 29 U.S.C. § 203(e)(13).



commerce or in the production of goods for commerce.

24. Defendant Audubon Communities Management, LLC is a limited liability

company domiciled in New York maintaining a business establishment at 4254 Ma

Drive, New Orleans, Louisiana, 7013. At all times relevant to this action, Audubon

Communities Management, LLC conducted business in the Eastern District of

At all times relevant to this action, Audubon Communities Management, LLC employed the Plaintiffs within the meaning of 29 U.S.C. § 203(g).

Audubon Communities Management, LLC

25. At all times relevant to this action, Au

of 29 U.S.C. § 203(g)

was an employer of the Plaintiffs within the meaning

ed in

26. Defendant Audubon-Algiers, LLC is a limited liability company domicil

eans,

Delaware and maintaining a business establishment at 4254 Maple Leaf Drive, New Or

business

Louisiana 70131. At all times relevant to this action, Audubon-Algiers, LLC conducted

in the Eastern District of Louisiana.

29 U.S.C. § 203(g)

27. At all times relevant to this action, Audubon-Algiers, LLC employed the

Plaintiffs within the meaning of

28. At all times relevant to this action, Defendant Audubon

was an employer of the Plaintiffs within the meaning of 29 U.S.C. § 203(g).

the named Plaintiffs and all other

the named Plaintiffs and all other

Defendant Audubon

majority. During times relevant to this action, Reynier was the President of Dere

Communities Management, LLC.

produced significant business income for the community during times relevant to this action, Reynier

District

31. During times relevant to this action, Reyher employed the Plaintiffs within the meaning of 29 U.S.C. § 203(g).

32. During times relevant to this action, Reyher was an employer of the Plaintiffs

within the meaning of 29 U.S.C. § 203(d).

Algers Partners, LLC, which may have been an employer of the Plaintiffs within the meaning of 29 U.S.C. § 203(d).

Algers Holdings, LLC, which may have been an employer of the Plaintiffs within the meaning of 29 U.S.C. § 203(d).

Defendants also owned and operated Audubon Open Information and have been an employer of the Plaintiffs within the meaning of 29 U.S.C. § 203(d).

At all times relevant to this action, the named Plaintiffs and all others similarly situated were employed by the Defendants in an enterprise engaged in commerce or in the production of goods for commerce.

IV. STATEMENT OF FACTS

37. Defendants own, operate and manage an apartment complex named "Audubon

Pointe of Algiers" (hereinafter "Audubon Pointe"). Audubon Pointe is located at

Leaf-Drive in New Orleans, Louisiana.

worked at Audubon Pointe at various times between March 17, 2005, and August 1, 2005. Plaintiff

damage done by Hurricane Katrina and performed general and the present repair

maintenance work on the premises.

At all times relevant to this action, Defendants employed Plaintiff as a maintenance

worker whose duties were to perform general and the present repair

work on the premises and did not include any duties that could be exempt under the FLSA

40 At all times relevant to this action, Defendants use

for the purpose of performing maintenance work on the premises.

and Plaintiff's duties were to perform general and the present repair

control over the workforce. Such control was provided to Plaintiff

their Defendant employers.

42. The apartment units in which Defendants housed the Plaintiff workers were

substandard and were not properly certified for occupancy at the time Plaintiffs were

housed in them.

to work there. While residing at American Park, the Plaintiffs were

between one and four weeks after the same was due. Defendants' delay and underpayment of

generally mandated minimum

wages resulted in Plaintiffs being paid substantially less than the fed

wage protected by the Fair Labor Standards Act.

to the Plaintiffs and other

47 Defendants failed to make any wage payments at all f

points, depriving individual

similarly situated workers for their final weeks of work at Audubon

plaintiffs wages were between one and fifteen months full weeks of work

times when they were paid. Plaintiffs were paid in irregular intervals, including the occas

the number of hours worked in a given workweek. When plaintiffs were paid for

regardless of tr

times above 40 in a given workweek. Defendants did not pay plaintiffs one-and-one-half for

given workweek

normally working six to seven days per week. Plaintiffs worked a regular schedule for Defendants, n

several days per week. Plaintiffs and all others similarly situated routinely worked excess

of forty hours per week for Defendants.

Plaintiffs were not given adequate notice of their rights under the FLSA, and Defendants failed to

accurate record of the hours Plaintiffs worked, as required by the FLSA and implementing

regulations. Defendants paid plaintiffs in cash and failed to provide them

with adequate or accurate pay stubs or receipts.

51. Upon information and belief, Defendants failed to post a notice informing their employees of their rights under the FLSA.

52. Defendants provided Plaintiffs with housing as a portion of their compensation, the reasonable rate of which was not calculated into the regular rate of pay for purposes of overtime payment. The apartment units in which Defendants housed the Plaintiff workers were unfinished, substandard and were not properly certified for occupancy at the time Plaintiffs were housed in them.

53. During the time period relevant to this action, Defendants' payroll practices were

uniform and applicable to all FLSA-covered workers for Audubon, a project of Audubon

Pointe in New Orleans, Louisiana.

withholding of wages due the Plaintiffs were not properly

54. Records of hours

paid minimum wages or overtime for hours worked in excess of forty hours per week.

development Section 5. The Plaintiffs lives in unfinished portions of the Audubon Pointe

trial using their work for Defendants. These apartments were provided to them as part

a Defendants compensation for their employment by Defendants. The apartment units in which

d the Plaintiff housed the Plaintiff workers were unfinished and substandard. Defendants house

ch housing was workers at the worksite to maintain access to and control over the workforce. Such

provision of housing for the primary benefit of their FLSA-covered employees.

56 Some apartment units in which Defendants housed the Plaintiffs were not

60. The Defendants locked Plaintiffs Ilsa Canales, Gustavo Garcia, Jose Efrain

ers had asserted their rights under the Fair Labor Standards Act by complaining about non-paym
ent and/or improper payment of wages on the date of the lockout and in previous communications

Gustavo Garcia, Jose Efrain Garcia, Heriberto Enriquez, Ayari Garcia, Marlene Julio Cesar

damages

rs LLC d/b/a Fair Labor Standards Act complaint in this matter to Defendants Abauben-Able

Able's Partners, LLC d/b/a Able's Holdings III, LLC d/b/a Able's

own their responsibility to negotiate an extrajudicial resolution of the Plaintiffs' th
claims under the Fair Labor Standards Act.

endants on complaint to the Defendants, the Plaintiffs had demanded unpaid wages from De

th threats to multiple occasions. The Defendants consistently responded to these demands w

evict the Plaintiffs and call law enforcement officers to detain them if the Plaintiffs did not return.

providing a tip to ICE, which encouraged and resulted in the detention of the Plaintiffs named in paragraph 65 above.

...ICE officers restricts the agency from acting on

...exists an ongoing labor dispute without first following

...of Homeland Security Operating Instruction 287.3a

...enforce their action

...since provides that ICE

...Homeland Security and

...Operating Instruction 287.3a

...Instructions of retaliation in this pending labor dispute

...redress retaliatory invocation of ICE enforcement Plaintiffs

...Salguero, Reyes, Aguilar-Garcia,

...of their liberty since February

...of An internal agency guida

...any tip linked to an employer, where the

...series of internal procedures, U.S. De

(Revised 12/04/96; Added to INSERIS April 1999); In the course

ICE should discover the existence of a labor dispute, the internal guida

should stop any further enforcement actions. The U.S. Department of

ICE are currently investigating the agency's potential violation of Con

and unwitting deportees as w

69 As a result of De

Fred Garcia, Misael Garcia, Victor Mantec, Maximiliano, Emilio

Salvador Valladares and Denis Amador-Diaz have been deprived

71. The policies complained of in Counts III and IV of this action are Defendants'

company-wide rationing policies generally applicable to all hours Defendants' employees
at the Audubon Pointe location. This is in violation of the Audubon Pointe, reported

72. The named Plaintiffs seek to represent a class consisting of all non-supervisory
manual laborers employed by Defendants in construction, building repair, maintenance and

arch 17, 2005 and associated activities in capacities at the Audubon Pointe location between M

nu pres

73. The precise number of individuals eligible to join the proposed collective action

is unknown to the Defendants. The class is believed to include approximately fifty (50) million

individuals

Plaintiffs and absent members of the proposed Counts III and IV. 74. The named Pla

situated. All workers eligible to join the putative collective action collective action are similarly

Pointe. Do not inform and would be manual laborers employed by Defendants at Audubon

all such workers included in the proposed collective action. Defendants made every effort to include every

this class. Upon information and belief, Defendants paid all workers included in the proposed

VI. VICTIM OF TRAFFICKING PROTECTION ACT

~~Count I, Victims of Trafficking Protection Act, Counts I, Victims of Trafficking Protection~~

~~the contents of paragraphs 57 through 69 above. Plaintiffs reallege and incorporate by reference the contents of paragraphs 57 through 69 above.~~

~~Defendants obtained the labor or services of the Plaintiffs by means of serious harm to Plaintiffs. 18 U.S.C. § 1589.~~

~~Defendants, through their actions recounted in paragraphs 57 through 69 above, Delivered~~

~~Defendants obtained the labor or services of Plaintiffs by engaging in a scheme, plan, or pattern to cause the Plaintiffs to believe that the Plaintiffs cannot~~

~~Defendants, Plaintiffs and others would suffer severe harm~~

~~Defendants obtained the labor or services of the Plaintiffs by means of the abuse or means of the abuse of law or the legal process. 18 U.S.C. § 1589.~~

~~As a result of Defendants' actions, 18 U.S.C. § 1589, Plaintiffs suffered substantial injury~~

80. Plaintiffs are entitled to recover damages arising from Defendants' violations of

the forced labor provisions of the United States Code, and reasonable attorneys fees, as

§:1595(a).....

**Count II: Victims of Trafficking Restoration Reauthorization Act – Trafficking W
Respect to Forced Labor**

by reference the contents of paragraph 69. Plaintiffs refile and incorporate

through 69 above.

actions set forth in paragraphs 69 through 77 above and in addition to the Defendants' violations of 18 U.S.C. § 1595(a) set forth in Count I. Defendants' additional violations of 18 U.S.C. § 1595(a)

following provisions of Title 18, Chapter 77: (1) the Defendants' violations of the

s in involuntary servitude, as defined by 18 U.S.C. § 1584, and knowingly and willfully holding Plaintiff

violating 18 U.S.C. § 1584; and the VTPA, 22 U.S.C. § 7102(5)(a) and (b)

1589; and 1590; violating 18 U.S.C. § 1594(a); Attempting to violate 18 U.S.C. §§ 1584;

prohibiting trafficking for sex-related purposes, and related substantial injury

payment and repayment of wages

(9) The Defendants' failures to pay the Plaintiffs and others similarly situated their

minimum wages were willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).

29 U.S.C. § 255(a).

acted knowingly, willfully, and/or in reckless disregard in failing to

90 Defendant

pay minimum wages.

are entitled to recover minimum wages under the FLSA, liquidated

92 Plaintiffs

damages, attorneys' fees and costs. 29 U.S.C. § 216(b).

Count IV: Fair Labor Standards Act - Overtime Claims

set forth above paragraph 89. Plaintiff's failure and deliberate by reference the allegation

the paragraphs numbered 88 through 90.

94 This Court seeks payment of overtime wages and under the FLSA is to be paid by

the named Plaintiff on behalf of themselves and all others similarly situated pursuant to 29

U.S.C. § 216(b).

Count V: Fair Labor Standards Act Retaliation – Retaliatory Eviction

101. Plaintiffs reallege and incorporate by reference the allegations set forth above in

paragraphs numbered 57 through 61

Defendants' violations of the FLSA. This count sets forth a claim for damages for
This claim is stated by Plaintiffs FLSA's anti-retaliation provisions: 29 U.S.C. §§ 215-216.

Edgar Govani Garcia-Martinez,

Ilsa Canales, Gustavo Garcia, Jose Efraim Garcia-Fernandez

Julio Cesar Hernandez-Garcia, and Santos Lara.

102. Plaintiffs Ilsa Canales, Gustavo Garcia, Jose Efraim Garcia-Fernandez, Edgar

Goveri Garcia-Martinez, Julio Cesar Hernandez-Garcia, and Santos Lara complained to the

Defendants in the early part of 2007 about violations of their rights under the Fair Labor

Standards Act.

103. These complaints constituted protected activity under the FLSA.

104. The Defendants' actions as described in paragraphs 57 through 61 above constitute

unlawful retaliation for activity protected by the FLSA, 29 U.S.C. § 215(a)(3).

Efraim Garcia

paragraphs 57 through 61 above, Plaintiffs Ilsa Canales, Gustavo Garcia, Jose

Hernandez, Edgar Govani Garcia, Martinez, Julio Cesar Hernandez Garcia, and Santos Lara were

temporarily homeless and suffered substantial damages

Plaintiffs Lisa Canales, Gustavo Garcia, Jose Effran Garcia-Hernandez, Edgar Govani Garcia,

Plaintiffs Julio Cesar Hernandez Garcia and Santos Lara are entitled to recover damages that

Defendants' Retaliatory Reporting to Immigration Authorities Constitutes a Violation of the Fair Labor Standards Act

by reference the allegations set forth above in 108. Plaintiffs re-allege and incorporate

paragraphs numbered 62 through 69.

109. This case sets forth a claim for damages for Defendants' violations of the

anti-retaliation provision of 29 U.S.C. § 15(a)(3). This claim is stated by Plaintiffs under FLSA's

Plaintiffs stated complaints 110. On February 19, 2008, the Plaintiffs, through their c

under the Fair Labor Standards Act in correspondence directed to the Defendants. Defendants

registered, bona fide, residence of Plaintiff's residence in the town of February 17, 2008.

judicial resolution of their claims under the FLSA. Plaintiffs' attempts to negotiate an ex-

Standard Act is activity protected by the FLSA. Defendants' activity protected by the FLSA, and the FLSA's

belief, the 112. As set forth in paragraphs 62 through 69 above, upon information and

retaliatory Defendants responded to Plaintiff's protected statement of a FLSA claim by making a

and appropriate for ICL.

invocation of ICL, Plaintiffs Fredi Garcia, Misael Garcia, Victor Manuel Maldonado, Emilio S

alvarez, Reyes Aguilar-Garcia, José Salvador, Reyes Aguilar-Garcia, José Salvador, Reyes Aguilar-Garcia, José Salvador

ador, Valladares and Denis Amador Diaz have been deprived of their liberty since February 2008 and have suffered substantial damages.

14. The Defendants' actions as described in paragraphs 62 through 69 above constitute illegal retaliation for activity protected by the FLSA, 29 U.S.C. § 215(a)(3).

15. As a result of Defendants' violations of the FLSA, Plaintiffs Fredi Garcia, Misael

ia, Victor Manuel Maldonado, Emilio Salguero, Reyes Aguilar-Garcia, José Salvador, Reyes Aguilar-Garcia, José Salvador

Salguero and Denis Amador Diaz are entitled to recover damages that arose as a result of Defendants' retaliatory actions, and any other legal or equitable relief that may be appropriate to

SA section 215(a)(3) 29 U.S.C. § 215(a)(3) effectuate the purposes of the FLSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that there be judgment rendered herein in favor of Plaintiffs and against Defendants as follows.

1. Judgment under Count I for damages arising from Defendants' violations of the forced-labor provisions of the United States Code and reasonable attorneys' fees associated with the presentation of Plaintiffs' Count I claims;

2. Judgment under Count II for damages arising from Defendants' violations of the provisions of 18 U.S.C. 1590 and reasonable attorneys' fees;

3. Judgment under Count III awarding Plaintiffs unpaid minimum wages, an equal amount in liquidated damages, attorneys' fees and costs;

4. Judgment under Count IV awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

5. Judgment under Count V awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

6. Judgment under Count VI awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

7. Judgment under Count VII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

8. Judgment under Count VIII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

9. Judgment under Count IX awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

10. Judgment under Count X awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

11. Judgment under Count XI awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

12. Judgment under Count XII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

13. Judgment under Count XIII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

14. Judgment under Count XIV awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

15. Judgment under Count XV awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

16. Judgment under Count XVI awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

17. Judgment under Count XVII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

18. Judgment under Count XVIII awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

19. Judgment under Count XIX awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

20. Judgment under Count XX awarding Plaintiffs unpaid overtime wages, an equal amount in liquidated damages, attorneys' fees and costs;

f. Judgment under Count V awarding Plaintiffs named therein damages arising from

AT AS MAY BE NECESSARY TO ENFORCE SUCH JUDGMENTS, INCLUDING REASONABLE ATTORNEY'S FEES, COSTS, REPARATORY ACTIONS, AND ANY OTHER LEGAL OR EQUITABLE REMEDIES

AS APPROPRIATE TO EFFECTUATE THE PURPOSES OF SECTION 213(a)(3), 213(b)

g. Judgment under Count V awarding Plaintiffs named therein damages

including reasonable attorney's fees, costs, reparatory actions, and any other legal or equitable remedies

AS APPROPRIATE TO EFFECTUATE THE PURPOSES OF SECTION 213(a)(3), 213(b)

and

Such other relief as the Court deems just and appropriate.

Respectfully submitted,


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