UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IVAN ALVAREZ, and all
similarly situated individuals,

Plaintiff,

CIVIL ACTION NO.: 08-cv-04871

v.

GOLD BELT, LLC,
GOLDBELT FALCON, L.L.C.,
GOLDBELT EAGLE, L.L.C.,
and THE BIONETICS CORPORATION,

Defendants.
_______________________________________/

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, IVAN ALVAREZ ("Plaintiff"), on behalf of himself and other employees and former employees similarly situated, by and through undersigned counsel, files this Complaint against Defendant, GOLD BELT, LLC ("GOLD BELT"), Defendant, GOLDBELT FALCON, L.L.C. ("GOLDBELT FALCON"), Defendant, GOLDBELT EAGLE L.L.C. ("GOLDBELT EAGLE"), and Defendant, THE BIONETICS CORPORATION ("BIONETICS") (collectively "Defendants"), and states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the "FLSA") to recover unpaid back wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney's fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

3. The Court has supplemental jurisdiction over Counts II through V of the Complaint, based upon 28 U.S.C. §1367(a), because the state law claims are factually "so related to the claims in the action within" the Court's original jurisdiction, that "they form part of the same case or controversy."

PARTIES

4. At all times material hereto, Plaintiff was, and continues to be a resident of Burlington County, New Jersey.

5. At all times material hereto GOLD BELT was, and continues to be a foreign corporation. Further, at all times material hereto, GOLD BELT was, and continues to be, engaged in business in New Jersey, with a principle place of business in New Jersey.

6. At all times material hereto GOLDBELT FALCON was, and continues to be a foreign limited liability company. Further, at all times material hereto, GOLDBELT FALCON was, and continues to be, engaged in business in New Jersey, with a principle place of business in New Jersey.

7. At all times material hereto GOLDBELT EAGLE was, and continues to be a foreign corporation. Further, at all times material hereto, GOLDBELT EAGLE was, and continues to be, engaged in business in New Jersey, with a principle place of business in New Jersey.

8. At all times material hereto BIONETICS was, and continues to be a foreign profit corporation. Further, at all times material hereto, BIONETICS was, and continues to be, engaged in business in New Jersey, with a principle place of business in New Jersey.

9. At all times material hereto, Plaintiff was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

10. At all times material hereto, Plaintiff was an "employee" of Defendants within the meaning of FLSA.

11. At all times material hereto, Defendants were the "employers" within the meaning of FLSA.

12. Defendants were, and continue to be, "employers" within the meaning of FLSA.

13. At all times material hereto, Defendants were, and continue to be, an "enterprise engaged in commerce" within the meaning of FLSA.

14. At all times material hereto, Defendants were, and continue to be, an enterprise engaged in the "production of goods for commerce" within the meaning of the FLSA.

15. Based upon information and belief, the annual gross revenue of Defendants were in excess of $500,000.00 per annum during the relevant time periods.

16. At all times hereto, Plaintiff was "engaged in commerce" and subject to individual coverage of the FLSA.

17. At all times hereto, Plaintiff was engaged in the "production of goods for commerce" and subject to the individual coverage of the FLSA.

18. The additional persons who may become plaintiffs in this action are/were role player/Citizen on Battlefield ("COB") employees of Defendants, who held similar positions to Plaintiff and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one and one-half times their regular rate for their hours worked in excess of forty (40) hours.

19. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendants.

STATEMENT OF FACTS

20. On or about August 2005, Defendants hired Plaintiff.

21. At various material times hereto, Plaintiff worked for Defendants in excess of forty (40) hours within a work week.

22. From at least August 2005 and continuing through October 2007, Defendants failed to compensate Plaintiff at rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty (40) hours in a single work week. Plaintiff should be compensated at the rate of one and one-half times Plaintiff's regular rate for those hours that Plaintiff worked in excess of forty (40) hours per week as required by the FLSA.

23. Further, from at least August 2005, and continuing through October 2007, Defendants failed to compensate Plaintiff for all hours worked, improperly reducing Plaintiff's hours, despite the fact that he was entitled to be paid for same.

24. Specifically, Defendants employed a time keeping system, under which they deducted one (1) hour for each eight (8) to eleven (11) hour workday for Plaintiff, regardless of whether Plaintiff took a one (1) hour break, or any break at all for the matter.

25. Similarly, Defendants employed a time keeping system, under which they deducted two (2) hours for each twelve (12) hour workday for Plaintiff, regardless of whether Plaintiff took a two (2) hour break, or any break at all for that matter.

26. Although the Defendants made automatic deductions to Plaintiff's recorded time, as outlined above, Plaintiff, and those similarly situated to him, rarely, if ever, actually took bona fide break periods of thirty or more minutes.

27. Documentation concerning the number of hours actually worked by Plaintiff and the compensation actually paid to the Plaintiff are in the possession and custody and control of Defendants.

28. Defendants have violated Title 29 U.S.C. §207 from at least August 2005 and continuing to date, in that:

a. Plaintiff worked in excess of forty (40) hours per week for the period of employment with Defendants;

b. No payments, and provisions for payment, have been made by Defendants to properly compensate Plaintiff at the statutory rate of one and one-half times Plaintiff's regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and

c. Defendants have failed to maintain proper time records as mandated by the FLSA.

29. Further, Defendants have violated New Jersey state law, by virtue of the fact that they failed to pay Plaintiff, and putative class members, for all "regular hours" worked in each work week.

30. Plaintiff has retained the law firm of MORGAN & MORGAN, P.A. to represent Plaintiff in the litigation and has agreed to pay the firm a reasonable fee for its services.

CLASS ACTION ALLEGATIONS

31. The Named Plaintiffs are individuals who, within the applicable period of limitations prior to the commencement of this action, were employed by Defendants in New Jersey. Plaintiffs bring this case as a class action pursuant to R. 4:32-1, on behalf of a Class consisting of all current and former hourly employees of Defendants in the State of New Jersey during the period September 22, 2005 to the present ("the Class").

32. Plaintiffs believe that there are hundreds of presently and formerly employed hourly paid COB employees in the Class. Given Defendants' size and the systematic nature of

Defendants' failure to comply with New Jersey statutory law and common law, the members of the Class are so numerous that joinder of all members is impractical.

33. Plaintiffs' claims are typical of the claims of the Class members because they were hourly COB employees who, like the Class members, sustained damages arising out of Defendants' campaign to require them to work off-the-clock.

34. Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs have retained counsel competent and experienced in complex, class action litigation and specifically, class and collective wage and hour litigation.

35. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to Plaintiffs and the Class are:

(a) Whether the work performed by Plaintiffs and the Class is included in the type of work Defendants employed Plaintiffs and the Class to perform;

(b) Whether Defendants have engaged in a pattern and/or practice in New Jersey of forcing or permitting Plaintiffs and the Class to work off-the-clock without compensation;

(c) Whether Defendants have engaged in a pattern and/or practice in New Jersey of encouraging Plaintiffs and the Class not to report all time worked;

(d) Whether Defendants have engaged in a pattern and/or practice in New Jersey of threatening Plaintiffs and the Class with discharge, demotion, or discrimination or otherwise intimidating Plaintiffs and the Class if they do not work off- the-clock;

(e) Whether Defendants, have failed to keep true and accurate time records for all hours worked by its employees as required by New Jersey State Wage and Hour Law, NJ. Stat. § 34:11-56a

(f) Whether Defendants failed to pay Plaintiffs and the Class for all work Defendants required Plaintiffs to perform;

(g) Whether Defendants violated the New Jersey State Wage and Hour Law, NJ. Stat §34:11-56a4; and

(h) The nature and extent of class-wide injury and the measure of damages for the injury.

36. a. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein;

b. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail.

c. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy; and

d. The Class is readily identifiable from Defendants' records.

37. Prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, the amounts at stake for many of the Class members, while substantial, are not great enough to enable them to maintain separate suits against Defendants.

39. Without a class action, Defendants will likely retain the benefit of their wrongdoing

and will continue a course of action which will result in further damages to Plaintiffs and the Class. Plaintiffs envision no difficulty in the management of this action as a class action.

COUNT I
VIOLATION OF 29 U.S.C. §207
OVERTIME COMPENSATION

40. Plaintiffs re-allege and incorporate by reference. each and every allegation set forth in the preceding paragraphs.

41. From at least August 2005 and continuing through October 2007, Plaintiff worked in excess of the forty (40) hours per week for which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

42. Plaintiff was, and is entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours.

43. At all times material hereto, Defendants failed, and continue to fail, to maintain proper time records as mandated by the FLSA.

44. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiff at the statutory rate of one and one-half times Plaintiff's regular rate of pay for the hours worked in excess of forty (40) hours per weeks when it knew, or should have known, such was, and is due.

45. Defendants have failed to properly disclose or apprise Plaintiff of Plaintiff's rights under the FLSA.

46. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

47. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to

29 U.S.C. §216(b).

48. At all times material hereto, Defendants failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiff by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees for fewer hours than they actually worked.

49. Based upon information and belief, the employees and former employees of Defendants similarly situated to Plaintiff were not paid for all hours worked, and to the extent such hours, if properly credited to Plaintiff, would have credited Plaintiff with more than forty (40) or more hours in a work week, Defendants have failed to properly pay Plaintiff, and those similarly situated to him, proper overtime wages at time and a half their regular rate of pay for such hours.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his/her favor against Defendants:

a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;

b. Awarding Plaintiff overtime compensation in the amount due him/her for Plaintiff's time worked in excess of forty (40) hours per work week;

c. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;

d. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);

e. Awarding Plaintiff pre-judgment interest; and

f. Ordering any other further relief the Court deems just and proper.

COUNT II
VIOLATION OF N.J.A.C. 12:56-5.2

50. Plaintiffs re-allege and incorporate by reference. each and every allegation set forth in the preceding paragraphs.

51. The Class period for this cause of action is September 22, 2005, to the present, and continuing.

52. At all times material hereto, N.J.A.C. §12:56-5.2 was in full force and affect.

53. N.J.A.C. §12:56-5.2 provides that "all the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked."

54. By their actions alleged above, Defendants violated the provisions of N.J.A.C. §12:56-52.

55. Plaintiffs and the Class worked during periods which the Defendants automatically deducted from their recorded time, which should have been counted as compensable time worked.

56. As a result of Defendants' illegal automatic deductions for breaks not taken, Plaintiffs and the Class received no compensation from Defendants for some hours worked.

57. As a result of the unlawful acts of Defendants, Plaintiffs and the Class are have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with costs and attorneys fees pursuant to the New Jersey State Minimum Wage Law, N.J.S.A §34:11-56a25.

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants: (1) Determining that this action may proceed and be maintained as a class

action; (2) For an award to Plaintiffs and the Class of damages for the amount of unpaid off-the-clock compensation, including all applicable prejudgment interest thereon; (3) For an award Plaintiffs and the Class of reasonable attorneys' fees and costs pursuant to the New Jersey State Minimum Wage Law; and (4) All other relief as this Court may deem proper.

COUNT III
BREACH OF ORAL AGREEMENT/CONTRACT

58. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

59. The Class period for this cause of action is September 22, 2002, to the present and continuing.

60. Defendants entered into oral agreements/contracts with each of the Plaintiffs and all members of the Class, whereby Defendants agreed to pay each Plaintiff and each class member an hourly wage for all work performed.

61. Plaintiffs and the Class performed work under such oral agreements/contracts. Plaintiffs and the Class performed their respective aforementioned services with the reasonable expectation that they would be paid at their hourly rates for all hours they worked for Defendants.

62. Defendants breached such oral agreement/contract, because Defendants failed to pay Plaintiffs and the Class for all hours worked.

63. Defendants' failure to pay Plaintiffs and the Class was based on Defendants' pay method, applicable to all Class members, whereby Defendants automatically deducted time from the Class members' weekly time records, despite the fact that the Class members were not relieved of their duties for at least twenty minutes during such times which were automatically deducted.

64. Defendants are liable to Plaintiffs and the Class for the damages incurred as a result

of Defendants' failure to pay Plaintiffs and the Class for all of the time which was illegally deducted from the time records for Plaintiffs and the Class.

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants: (1) Determining that this action may proceed and be maintained as a class action; (2) For damages according to the proof at trial; (3) Awarding Plaintiffs and the Class pre-judgment interest on all amounts deemed due them; (4) Awarding Plaintiffs and the members of the Class attorneys' fees and costs to the extent permitted by law; and (5) All other relief as this Court may deem proper.

COUNT IV
UNJUST ENRICHMENT

65. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

66. The Class period for this cause of action is September 22, 2002, to the present, and continuing.

67. At all times relevant hereto, Defendants, by implementing the policy whereby they made automatic deductions for time actually worked by Plaintiffs and the Class, were unjustly enriched.

68. At all times relevant hereto, Plaintiffs and the Class conferred benefits on the Defendants, by virtue of their work/services performed for Defendants.

69. At all times relevant hereto, the Defendants had full knowledge that Plaintiffs and the Class were, and still are performing the aforementioned work for which Plaintiffs and the Class received no compensation.

70. At all times relevant hereto, Defendants voluntarily accepted and retained the benefits conferred by such work performed by Plaintiffs and the Class without receiving any

compensation.

71. If Defendants were to retain the benefit of the work performed by Plaintiffs and the Class, the retention of the benefit would be inequitable unless the defendant pays to the plaintiff the value of their benefit.

72. Accordingly, Plaintiffs and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by Defendants.

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for judgment against Defendants: (1) Determining that this action may proceed and be maintained as a class action; (2) For damages according to the proof at trial; (3) Awarding Plaintiffs and the Class pre-judgment interest on all amounts deemed due them; (4) Awarding Plaintiffs and the members of the Class attorneys' fees and costs to the extent permitted by law; and (5) All other relief as this Court may deem proper.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED this 27th day of May 2009

Respectfully submitted,

s/ ANDREW FRISCH
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