

JUDGE FURMAN

13 CV 3594

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERICA VAN RABENSWAAY, X

Plaintiff,

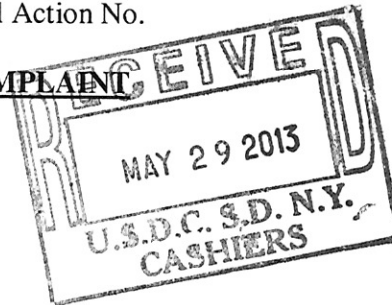
-against-

NORMA KAMALI, NORMA KAMALI DESIGN
CORP., NORMA KAMALI, INC., NORMA KAMALI
WELLNESS LLC,
Defendants.

X

Civil Action No.

COMPLAINT



By her attorneys Maurice Pianko of Pianko Law Group PLLC, and Jesse Strauss of Strauss Law PLLC, Plaintiff Erica Van Rabenswaay, respectfully sets forth and alleges as follows:

PRELIMINARY STATEMENT AND SUMMARY OF CLAIMS

1. Defendants Norma Kamali, Norma Kamali Design Corp., Norma Kamali, Inc., and Norma Kamali Wellness, LLC (collectively referred to as "Defendants"), are well-regarded designers of women's fashion with sales of at least \$5 million per year (and possibly as much as \$10 million per year). Defendants employed Plaintiff Erica van Rabenswaay ("Plaintiff" or "Ms. van Rabenswaay") from December 17, 2012 to March 15, 2013 ("First Employment Period"). Despite performing tasks solely to the benefit of Defendants at their request during the First Employment Period – tasks that an employee would generally expect compensation for – Ms. Van Rabenswaay was paid nothing for her work, and was not compensated at the minimum wage and overtime pay as required the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* and New York State Labor Law Art. 6, §§ 190 *et seq.*, Art.

19, §§ 650 *et seq.*, as well as the supporting regulations of the New York Department of Labor, codified at N.Y. Comp Codes R. & Regs. tit. 12, Part 142 *et seq.* (collectively “NYLL”).

2. Despite failing to compensate Ms. van Rabenswaay as required, Defendants insisted that Ms. van Rabenswaay commit “full time” to her employment during the First Employment Period, forgoing any compensated employment while working for Defendants, unpaid. Ms. van Rabenswaay’s full time commitment to Defendants exceeded forty hours per week during the First Employment Period. Other than three Metrocards, she received no compensation for any of the hours worked during the First Employment Period.

3. On March 18, 2013 Ms. van Rabenswaay began to be paid for her work. She was compensated for her work from March 18, 2013 to April 12, 2013 (“Second Employment Period”). There was no distinction between the tasks she performed unpaid during the First Employment Period, and those she performed once paid during the Second Employment Period.

4. During the Second Employment Period, Ms. van Rabenswaay worked far in excess of forty hours per week and was not compensated at an overtime rate in violation of FLSA and the NYLL.

5. Ms. van Rabenswaay was terminated on April 12, 2013. The stated reason for her termination was Defendants’ desire to hire an employee with more experience. However, on April 18, 2013, just six days after terminating Ms. van Rabenswaay’s paid employment, Defendants posted an internet job listing seeking an uncompensated “apprentice” to perform the exact tasks performed by Ms. van Rabenswaay.

6. Ms. van Rabenswaay’s unpaid work for Defendants is part of a broader trend where formerly entry level employees are being misclassified as unpaid “interns” or

“apprentices” in an effort by employers to avoid paying wages as required by state laws and FLSA. These programs purport to be training programs, but provide little value to the worker while enriching the employer through the provision of free labor. The result is that while certain employers save wage expenses, the economy as a whole suffers from fewer paid job opportunities. Moreover, the economic and moral wellbeing of our nation is compromised due to the further marginalization of workers who cannot provide free services but rather must accept low wage employment in other sectors, thus foreclosing certain employment options, and indeed entire fields, from the already vulnerable.

7. Ms. van Rabenswaay brings this action to obtain for herself the wages she was unlawfully denied, including minimum wage, overtime compensation, and spread-of-hours compensation plus interest, liquidated damages in accordance with FLSA and NYLL, as well as attorneys’ fees and costs.

JURISDICTION AND VENUE

8. Subject matter jurisdiction is proper in this Court for Plaintiff’s FLSA claims pursuant to 28 U.S.C. §§1331 and 1337. Subject matter jurisdiction is proper in this Court for Plaintiff’s NYLL claims pursuant to 28 U.S.C. § 1367. Plaintiff’s NYLL claims are so closely related to Plaintiff’s FLSA claims that the form part of the same case and controversy.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

10. Plaintiff is an individual who resides in Bronx County, New York. Plaintiff obtained a Bachelors of Arts in Integrative Arts from The Pennsylvania State University

with a focus in 3D Fabrication Design, Graphic Design, and Photography. Plaintiff is fluent in the use of numerous specialty computer programs. Plaintiff has been employed by several firms in her field. Other than Defendants, all but one employer compensated Plaintiff for her work. Plaintiff is currently employed full time in her field and is compensated for her work. Plaintiff is also knowledgeable and experienced in the emerging field of three dimensional printing.

11. Plaintiff was employed by Defendants and termed an “apprentice” during the First Employment Period. During the Second Employment Period, Plaintiff was employed by Defendants and termed an “employee.”

12. During both the First and Second Employment Periods, Plaintiff was a covered employee within the meaning of the FLSA and NYLL.

13. Defendant Norma Kamali (“Ms. Kamali”) is individual residing within this judicial district. Ms. Kamali is an officer of, director and owner of Defendants Norma Kamali Design Corp., Normal Kamali Inc., and Norma Kamali Wellness LLC (“Corporate Defendants”). Throughout Plaintiff’s employment at Corporate Defendants, Corporate Defendants maintained control, oversight and direction over Plaintiff, including with respect to hiring, firing and other employment practices. Corporate Defendants all share the same address in this district: 11 West 56th Street, New York, New York.

14. Upon information and belief, Ms. Kamali has power over personal decisions and payroll decisions, and the power to set work schedules and maintain employment records at the Corporate Defendants. Ms. Kamali was Plaintiff’s employer within the meaning of the FLSA and NYLL.

15. Defendants engage in interstate commerce, with an annual gross volume of sales well in excess of \$500,000.

FACTS

16. During the First Employment Period, Plaintiff performed the following tasks for Defendants, without compensation:

- a. Photo retouching, which includes resizing photographing for web and print publication;
- b. Photographing products for inclusion on web and print publications;
- c. Determining the composition of jewelry (“jewelry spec’ing”);
- d. Editing Defendants’ “brand book” and “look book;”
- e. Supporting sales staff by e-mailing links to products as requested;
- f. Creating compelling visuals for Defendants’ e-mail blasts;
- g. Placing pictures of products on e-commerce sites both managed by Defendants and third parties.
- h. Other tasks as needed at the request of supervisors, including compiling a brand book for distribution to potential private equity funders.
- i. Created signage and labels for Defendants’ retail operations.

17. Plaintiff performed the same tasks during the Second Employment Periods.

18. Plaintiff had previously been trained in several of the above tasks, which was the reason for Defendants’ hiring of Plaintiff. Because of Plaintiff’s prior training, she received no benefit from completing these tasks for the Defendants.

19. There was no formal training component to Plaintiff’s employment. Plaintiff had been fully trained in the use of all computer software necessary for her assigned

tasks prior to her employment. Plaintiff was specifically hired because of her proficiency in necessary software, among other reasons.

20. During both the First and Second Employment Periods, Defendant benefited from the work that Plaintiff performed.

21. Plaintiff never impeded Defendants' operations during the First Employment Period.

22. During the First and Second Employment Periods, no academic or vocational training was provided to Plaintiff.

23. During the First and Second Employment Periods, Plaintiff was told by Defendants when to work and where to report, daily.

24. Plaintiff's work during both the First and Second Employment Periods required intelligence, diligence and accuracy.

25. Plaintiff's work during both the First and Second Employment Periods was not ancillary to Defendants' product, but was rather an integral part of it.

26. During both the First and Second Employment Periods, Plaintiff never had supervisory responsibility over other employees and was never permitted to choose her tasks. Rather, Plaintiff was assigned tasks and had no discretion to choose her own. Plaintiff was always supervised.

27. During the First and Second Employment Periods, Plaintiff's hours were documented in daily e-mails to her supervisor stating the hours of employment each day and the tasks accomplished during the day. These e-mails were required by Defendants.

28. Defendants required Plaintiff to be at work from 10am to 6pm each business day of her employment during the First Employment Period. During the First

Employment Period, Plaintiff regularly worked past 6pm and often until after 8pm. On average during the First Employment Period, Plaintiff worked forty (40) regular hours, unpaid, and the (10) hours overtime, per week, also unpaid.

29. During the Second Employment Period, Plaintiff worked, on average fifty hours per week, but received no overtime pay.

30. With the exception of the requirement that Plaintiff send an e-mail stating her hours worked and tasks performed, Defendants failed to keep accurate or adequate records of the hours that Plaintiff worked, as required by FLSA and the NYLL. Upon information and belief, Defendants purposefully evaded FLSA and NYLL's requirement to keep accurate time records of Plaintiff's work.

31. Upon information and belief, Plaintiff displaced regular employees during the First Employment Period. One compensated employee who worked alongside Plaintiff on similar tasks quit during Plaintiff's employment. Plaintiff assumed many of her responsibilities, unpaid.

32. Upon information and belief, Defendant would have hired additional employees or required paid staffers to work additional hours had Plaintiff not performed uncompensated work for Defendants during the First Employment Period.

33. During the First Employment Period, Plaintiff was provided three Metrocards to offset her commuting costs. The value of each MetroCard was \$104.

34. During the Second Employment Period, Plaintiff was compensated at a rate of \$865 per week but received no overtime pay.

35. During the First and Second Employment Periods, Plaintiff did not receive spread-of-hour compensation.

36. Defendants have failed to pay wages to Plaintiff for all hours worked during both the First and Second Employment Periods.

37. During both the First and Second Employment Periods, Defendants failed to provide notice to Plaintiff regarding the regular hourly rate of pay and the overtime rate, and other information in writing as required by the NYLL. Defendants also did not request written confirmation of the same, also in violation of the NYLL.

38. During the First Employment Period, Defendants failed to provide Plaintiff with a wage statement as required by the NYLL.

39. Defendants, by terminating Plaintiff one month into the Second Employment Period, and then advertising her position as an unpaid position, acted willfully in avoiding the minimum wage, overtime, and spread-of-hours requirements of the FLSA and NYLL.

40. Defendants' failure to pay Plaintiff for all hours worked pursuant to NYLL and FLSA during the First and Second Employment periods was willful, intentional, in bad faith and has caused Plaintiff significant damages.

41. Defendants' unlawful conduct has been pursuant to a corporate policy or practice of minimizing labor costs by denying Plaintiff compensation and sartorially required notice, all in violation of FLSA and NYLL.

CAUSES OF ACTION

As For a First Cause of Action

Minimum Wages Due Under the FLSA for the First Employment Period

42. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

43. FLSA, specifically, 29 U.S.C. § 206, requires employers such as Defendants to pay wages at the following rate during Plaintiff's employment: \$7.25 per hour.

44. Plaintiff was an employee during the First Employment Period. *See* 29 U.S.C. §203(e).

45. During the First Employment Period Defendants suffered or permitted Plaintiff to work and were Plaintiff's employers. *See* 29 U.S.C. § 203.

46. During the First Employment Period Plaintiff engaged in commerce and/or the production of goods for commerce and was employed by an entity engaged in commerce and/or in the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

47. During the First Employment Period, Defendants were engaged in commerce and/or the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

48. None of the exemptions found in 29 U.S.C. § 213 apply to Plaintiff.

49. Defendants are employers and therefore have violated FLSA by failing to compensate Plaintiff at the rate of at least \$7.25 per hour during the First Employment Period. *See* 29 U.S.C. § 203.

50. During the First Employment Period Defendants failed to pay Plaintiff minimum wages for all hours worked in violation of 29 U.S.C. § 206.

51. Defendants' failure to pay Plaintiff for all hours worked during the First Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the minimum wage, at least, was unlawful. Defendants have not made a good faith effort to comply with FLSA.

52. Defendants, for the above reasons, are liable to Plaintiff for wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment

interest, plus other interest, plus attorneys' fees and costs and all other compensation required by 29 U.S.C. § 216(b).

As For a Second Cause of Action
Overtime Wages Due Under FLSA for the First Employment Period

53. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

54. FLSA, specifically, 29 U.S.C. § 207, requires employers such as Defendants to pay overtime wages at a rate equal to one and one-half times the regular rate at which she is employed for each hour worked longer than forty hours in a workweek.

55. Plaintiff regularly worked in excess of forty hours per week during the First Employment Period.

56. Plaintiff was an employee during the First Employment Period. *See* 29 U.S.C. §203(e).

57. During the First Employment Period Defendants suffered or permitted Plaintiff to work and were Plaintiff's employers. *See* 29 U.S.C. § 203.

58. During the First Employment Period Plaintiff engaged in commerce and/or the production of goods for commerce and was employed by an entity engaged in commerce and/or in the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

59. During the First Employment Period, Defendants were engaged in commerce and/or the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

60. None of the exemptions found in 29 U.S.C. § 213 apply to Plaintiff.

61. During the First Employment Period Defendants failed to pay Plaintiff at the rate of one and one-half times the minimum wage in violation of 29 U.S.C. § 207.

62. Defendants are employers and therefore have violated FLSA by failing to compensate Plaintiff for overtime hours at the rate of one and one-half times the minimum wage during the First Employment Period. *See* 29 U.S.C. § 203.

63. Defendants' failure to pay Plaintiff overtime wages during the First Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the required overtime rate was unlawful. Defendants have not made a good faith effort to comply with FLSA.

64. Defendants, for the above reasons, are liable to Plaintiff for overtime wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys' fees and costs and all other compensation required by 29 U.S.C. § 216(b).

As For a Third Cause of Action
Overtime Wages Due Under FLSA for the Second Employment Period

65. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

66. FLSA, specifically, 29 U.S.C. § 207, requires employers such as Defendants to pay overtime wages at a rate equal to one and one-half times the regular rate at which she is employed for each hour worked longer than forty hours in a workweek.

67. Plaintiff regularly worked in excess of forty hours per week during the Second Employment Period.

68. Plaintiff was an employee during the Second Employment Period. *See* 29 U.S.C. §203(e).

69. During the Second Employment Period Defendants suffered or permitted Plaintiff to work and were Plaintiff's employers. *See* 29 U.S.C. § 203.

70. During the Second Employment Period Plaintiff engaged in commerce and/or the production of goods for commerce and were employed by an entity engaged in commerce and/or in the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

71. During the Second Employment Period, Defendants were engaged in commerce and/or the production of goods for commerce. *See* 29 U.S.C. §§ 203, 206.

72. None of the exemptions found in 29 U.S.C. § 213 apply to Plaintiff.

73. During the Second Employment Period Defendants failed to pay Plaintiff at the rate of one and one-half times the minimum wage in violation of 29 U.S.C. § 207.

74. Defendants are employers and therefore have violated FLSA by failing to compensate Plaintiff for overtime hours at the rate of one and one-half times the minimum wage during the Second Employment Period. *See* 29 U.S.C. § 203.

75. Defendants' failure to pay Plaintiff overtime wages during the Second Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the required overtime rate was unlawful. Defendants have not made a good faith effort to comply with FLSA.

76. Defendants, for the above reasons, are liable to Plaintiff for overtime wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys' fees and costs and all other compensation required by 29 U.S.C. § 216(b).

As for the Fourth Cause of Action
Minimum Wages Due Under NYLL for the First Employment Period

77. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

78. NYLL, specifically, NYLL § 652 and the supporting regulations, 12 NYCRR § 137-1.2, require employers such as Defendants pay wages at the following rate during Plaintiff's employment: \$7.25 per hour.

79. Plaintiff was an employee during the First Employment Period. *See* NYLL § 651.

80. Defendants were employers during the First Employment Period. *See* NYLL § 651.

81. During the First Employment Period Defendants failed to pay Plaintiff minimum wages for all hours worked in violation of NYLL § 652 and 12 NYCRR § 137-1.2.

82. Defendants' failure to pay Plaintiff for all hours worked during the First Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the minimum wage, at least, was unlawful. Defendants have not made a good faith effort to comply with NYLL.

83. Defendants, for the above reasons, are liable to Plaintiff for wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys' fees and costs and all other compensation required by NYLL §§ 198 and 663.

As for the Fourth Cause of Action
Overtime Wages Due Under NYLL for the First Employment Period

84. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

85. NYLL and its supporting regulations, specifically 12 NYCRR §142-2.2, requires employers such as Defendants to pay overtime wages at a rate equal to one and one-half

times the regular rate at which she is employed for each hour worked longer than forty hours in a workweek.

86. Plaintiff regularly worked in excess of forty hours per week during the First Employment Period.

87. Plaintiff was an employee during the First Employment Period. *See* NYLL § 651.

88. Defendants were employers during the First Employment Period. *See* NYLL § 651.

89. None of the exemptions found in the FLSA, made application to the NYLL through NYCRR § 142-2.2, apply.

90. During the First Employment Period Defendants failed to pay Plaintiff overtime pay in violation of 12 NYCRR § 142-2.2.

91. Defendants' failure to pay Plaintiff at an overtime rate during the First Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the overtime rate was unlawful. Defendants have not made a good faith effort to comply with NYLL.

92. Defendants, for the above reasons, are liable to Plaintiff for wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys' fees and costs and all other compensation required by NYLL §§ 198 and 663.

As for the Fifth Cause of Action
Overtime Wages Due Under NYLL for the Second Employment Period

93. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

94. NYLL and its supporting regulations, specifically 12 NYCRR §142-2.2, requires employers such as Defendants to pay overtime wages at a rate equal to one and one-half times the regular rate at which she is employed for each hour worked longer than forty hours in a work week.

95. Plaintiff regularly worked in excess of forty hours per week during the Second Employment Period.

96. Plaintiff was an employee during the Second Employment Period. *See* NYLL § 651.

97. Defendants were employers during the Second Employment Period. *See* NYLL § 651.

98. None of the exemptions found in the FLSA, made application to the NYLL through NYCRR § 142-2.2, apply.

99. During the Second Employment Period Defendants failed to pay Plaintiff overtime pay in violation of 12 NYCRR § 142-2.2.

100. Defendants' failure to pay Plaintiff at an overtime rate during the Second Employment Period was willful. Defendants were aware or should have been aware that their failure to compensate Plaintiff at the overtime rate was unlawful. Defendants have not made a good faith effort to comply with NYLL.

101. Defendants, for the above reasons, are liable to Plaintiff for wages earned in an amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys' fees and costs and all other compensation required by NYLL §§ 198 and 663.

As for the Seventh Cause of Action
Spread-of-Hours-Pay Under NYLL During the First and Second Employment Periods

102. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

103. NYLL and its supporting regulations, specifically 12 NYCRR §142-2.4(a), require employers such as Defendants to pay one hour pay at the minimum wage rate for each day during which Plaintiff worked more than ten hours (“spread-of-hours pay”).

104. Plaintiff was an employee during both the First and Second Employment Periods. *See* NYLL § 651.

105. Defendants were employers during both the First and Second Employment Periods. *See* NYLL § 651.

106. Plaintiff regularly worked in excess of ten hours per day during both the First and Second Employment Periods.

107. Defendants did not pay Plaintiff spread-of-hours-pay during both the First and Second Employment Period in violation of the NYLL.

108. Defendants’ failure to pay Plaintiff spread-of-hours-pay during both the First and Second Employment Period was willful.

109. Defendants, for the above reasons, are liable to Plaintiff for spread-of-hours-pay amount to be determined at trial, plus statutory liquidated damages, plus prejudgment interest, plus other interest, plus attorneys’ fees and costs and all other compensation required by NYLL §§ 198 and 663.

As for the Seventh Cause of Action
Record Keeping Violations Under NYLL

110. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

111. During both the First and Second Employment Periods, Defendants failed to make, keep, and preserve accurate records reflecting Plaintiff's hours worked each workday and total hours worked each workweek as required by the NYLL.

112. During both the First and Second Employment Periods Defendants also failed to provide Plaintiff a statutorily required notice containing the rate or rates of pay and basis thereof, the regular pay day, and other information required by the NYLL.

113. Defendant further failed to provide Plaintiff a statutory statement of wages as required by the NYLL during the First Employment Period.

114. Defendants, for the above reasons, are liable to Plaintiff for statutory liquidated damages for each work week that the violation occurred, plus attorneys' fees and costs and pre-judgment and post judgment interest as required by NYLL §§ 198 and 663.

As for the Eighth Cause of Action
Record Keeping Violations Under FLSA

115. Plaintiff repeats and re-alleges the allegations set forth in paragraphs 1 through __, above.

116. Defendants failed to make, keep, and preserve accurate records reflecting Plaintiff's hours worked each workday and total hours worked each workweek as required by the FLSA, specifically 29 U.S.C. §211(c) and supporting federal regulations.

RELIEF REQUESTED

WHEREFORE, Plaintiff seeks the following relief:

1. Unpaid minimum wages, overtime pay, and an additional and an equal amount as liquidated damages pursuant to FLSA and the supporting regulations;

2. Unpaid overtime, unpaid minimum wages, and unpaid spread-of-hours wages pursuant to NYLL and the supporting regulations, and an additional and an equal amount as liquidated damages pursuant to NYLL;

3. Statutory damages for Defendants' notice and recordkeeping violations pursuant to NYLL;

4. Pre and post judgment interest;

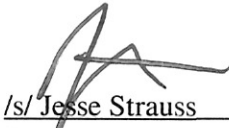
5. Reasonable attorneys' fees and costs of the action;

6. Such other relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to FRCP 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Third Amended Class Action Complaint.

Dated: New York, New York
May 29, 2013

By:  /s/ Jesse Strauss
Jesse Strauss (JS 0212)
STRAUSS LAW PLLC
305 Broadway, 9th Floor
New York, NY 10007
jesse@strausslawpllc.com
Phone (212) 822-1496
Facsimile (212) 822-1407

/s/ Maurice Pianko
Maurice Pianko (MP 6486)
PIANKO LAW GROUP PLLC
55 Broadway, #13F
New York, NY 10004
mpianko@gmail.com
Phone (646) 801-9675
Facsimile (973) 689-8874

Attorneys for Erica van Rabenswaay