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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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METROPOLITAN VALUATION SERVICES, INC. Index No. 653028-20

*Plaintiff,*

-against-

DOUGLAS GEDDES and BROADVIEW  
VALUATION SERVICES, INC.,

*Defendants.*

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DOUGLAS GEDDES,

*Counterclaim-Plaintiff,*

-against-

METROPOLITAN VALUATION SERVICES, INC.,

*Counterclaim-Defendants.*

-----X

Defendants Douglas Geddes (“Geddes”) and Broadview Valuation Services, Inc. (“Broadview”) (collectively “Geddes and Broadview”), by their undersigned attorneys, allege as follows for their Answer to the Complaint of Metropolitan Valuation Services, Inc. (“MVS”):

1. Deny the allegations of paragraph 1 of the Complaint, except admit that well after Geddes was taken off the regular MVS payroll and became an intermittent employee of MVS on or about July 21, 2017, he continued to make

use of MVS's subscription to certain third-party data at no additional cost to MVS instead of paying the roughly \$600 per month that it would have cost him to separately access that same data for his later-formed company, Broadview.

2. Deny the allegations of paragraph 2 of the Complaint, except admit that well after Geddes was taken off the regular MVS payroll and became an intermittent employee of MVS, he continued to make use of MVS's subscription to certain third-party data at no additional cost to MVS instead of paying the roughly \$600 per month that it would have cost him to separately access that same data for his later-formed company, Broadview.

3. Deny the allegations of paragraph 3 of the Complaint, except admit that the Complaint demands compensatory and punitive damages.

4. Admit, upon information and belief, the allegations of paragraph 4 of the Complaint.

5. Admit the allegations of paragraph 5 of the Complaint.

6. Admit the allegations of paragraph 6 of the Complaint.

7. Admit the allegations of paragraph 7 of the Complaint.

8. Admit, upon information and belief, the factual allegations of paragraph 8 of the Complaint.

9. Admit that the Complaint includes a demand for damages in excess of the limits of the lower courts and a demand for injunctive relief, and otherwise deny the allegations of paragraph 9 of the Complaint.

10. Admit, upon information and belief, the factual allegations of paragraph 10 of the Complaint.

11. Admit that MVS is a large commercial property appraisal and consulting practice for lenders and owners in the New York Metro market, and otherwise deny knowledge and information sufficient to form a belief as to the truth or falsity of paragraph 11 of the Complaint.

12. Admit, upon information and belief, the allegations of paragraph 12 of the Complaint.

13. Admit, upon information and belief, the allegations of paragraph 13 of the Complaint, except deny knowledge and information sufficient to form a belief as to whether MVS has anyone on staff offering HUD MAP services.

14. Deny knowledge and information sufficient to form a belief as to the truth or falsity of paragraph 14 of the Complaint.

15. Deny knowledge and information sufficient to form a belief as to the truth or falsity of paragraph 15 of the Complaint.

16. Admit, upon information and belief, the allegations of paragraph 16 of the Complaint.
17. Deny the allegations of paragraph 17 of the Complaint, except admit that Geddes commenced his employment with MVS on or about April 4, 2005, tendered his resignation in June 2017, became an intermittent employee of MVS on or about July 21, 2020, and ceased being an intermittent employee of MVS on or about either May 22, 2020 or June 24, 2020.
18. Admit the allegations of paragraph 18 of the Complaint.
19. Admit the allegations of paragraph 19 insofar as it alleges that such expenses were paid up to early 2018, and admit that certain of those expenses continued to be paid thereafter, and otherwise deny the allegations of paragraph 19 of the Complaint.
20. Paragraph 20 calls for a legal conclusion and therefore does not require a response. To the extent a response is required, for the period after Geddes became an intermittent employee, Geddes does not believe he had any duty to work exclusively on behalf of MVS, and is otherwise uncertain as to the scope and contours of whatever duties one who is not bound by any noncompete and is employed on an intermittent basis owes his employer.
21. Deny knowledge and information sufficient to form a belief as to the truth or falsity of paragraph 21 of the Complaint.

22. Deny the allegations of paragraph 22 of the Complaint, except admit that Geddes was removed from MVS's regular payroll on about June 30, 2017 and that about 3-4 times a year he continued to use his old office.

23. Admit that the overall number of assignments referenced in paragraph 23 of the Complaint appears close to the overall number of assignments Geddes performed on behalf of MVS, but deny that Geddes was paid for all of the assignments he completed for MVS, and otherwise deny knowledge and information sufficient to form a belief as to the truth or falsity of paragraph 23 of the Complaint.

24. Admit that MVS freely continued Geddes' access to the referenced data without Geddes having requested it, and otherwise deny knowledge and information sufficient to form a belief as to the truth of paragraph 24 of the Complaint.

25. Admit that Geddes did not specify in those sources that his MVS employment was intermittent in nature beginning on or about July 21, 2017, and otherwise deny knowledge and information sufficient to form a belief as to the truth of paragraph 25 of the Complaint.

26. Deny paragraph 26 of the Complaint.

27. Admit that Geddes incorporated Broadview in August 2018, and otherwise deny the allegations of paragraph 27 of the Complaint.

28. Deny paragraph 28 of the Complaint.

29. Deny paragraph 29 of the Complaint.

30. Deny paragraph 30 of the Complaint, except admit that Geddes did certain assignments for the client in question at that client's specific request (without Geddes having solicited that client's business) after Geddes' replacement at MVS resigned, and admit that when doing so he continued to make use of MVS's subscription to certain third-party data instead of paying the roughly \$600 per month that it would have cost him to separately access that same data.

31. Deny the allegations of paragraph 31 of the Complaint, except admit that after Geddes was taken off MVS's regular payroll and became an intermittent employee who sometimes did no work for MVS for extended periods, he also did non-MVS appraisal work, including for entities that had also been or that are MVS clients.

32. Deny the allegations of paragraph 32 of the Complaint, except admit that Geddes continued to make use of MVS's subscription to certain third-party data instead of paying the roughly \$600 per month that it would have cost him to separately access that same data.

33. Admit that as a long-time employee of MVS, it was unavoidable that Geddes's writing style, report structure, and analytical approach would resemble MVS work, and admit that Geddes continued to make use of

MVS's subscription to certain third-party data instead of paying the roughly \$600 per month that it would have cost him to separately access that same data, and otherwise deny the allegations of paragraph 33 of the Complaint.

34. Deny the allegations of paragraph 34 of the Complaint.

35. Deny the allegations of paragraph 35 of the Complaint.

36. Deny the allegations of paragraph 36 of the Complaint.

37. Geddes and Broadview incorporate the responses to paragraphs 1-36 of the Complaint by reference.

38. Admit the allegations of paragraph 38, except deny that his employment was not intermittent after July 21, 2017.

39. Paragraph 39 calls for a legal conclusion and therefore does not require a response. To the extent a response is required, for the period after Geddes became an intermittent employee, Geddes does not believe he had any duty to work exclusively on behalf of MVS, and is otherwise uncertain as to the scope and contours of whatever duties one who is not bound by any noncompete and is employed on an intermittent basis owes his employer.

40. Paragraph 40 calls for a legal conclusion and therefore does not require a response. To the extent a response is required, for the period after Geddes became an intermittent employee, Geddes does not believe he had any duty to work exclusively on behalf of MVS, and is otherwise uncertain as to the scope and

contours of whatever duties one who is not bound by any noncompete and is employed on an intermittent basis owes his employer.

41. Deny the allegations of paragraph 41 of the Complaint, except admit that Geddes continued to make use of MVS's subscription to certain third-party data instead of paying the roughly \$600 per month that it would have cost him to separately access it.

42. Admit that Geddes should not have continued to make use of MVS's subscription to certain third-party data instead of paying the roughly \$600 per month that it would have cost him to separately access it, and otherwise deny the allegations of paragraph 42 of the Complaint.

43. Deny the allegations of paragraph 43 of the Complaint.

44. Deny the allegations of paragraph 44 of the Complaint.

45. Geddes and Broadview incorporate the responses to paragraphs 1-45 of the Complaint by reference.

46. Deny the allegations of paragraph 46 of the Complaint.

47. Deny the allegations of paragraph 47 of the Complaint.

48. Geddes and Broadview incorporate the responses to paragraphs 1-47 of the Complaint by reference.

49. Deny that MVS is entitled to an accounting.

50. Geddes and Broadview incorporate the responses to paragraphs 1-49 of the Complaint by reference.

51. Deny the allegations of paragraph 51 of the Complaint.

52. Deny the allegations of paragraph 52 of the Complaint.

53. Deny the allegations of paragraph 53 of the Complaint.

54. Geddes and Broadview incorporate the responses to paragraphs 1-53 of the Complaint by reference.

55. Deny the allegations of paragraph 55 of the Complaint.

56. Deny the allegations of paragraph 56 of the Complaint.

57. Geddes and Broadview incorporate the responses to paragraphs 1-56 of the Complaint by reference.

58. Deny the allegations of paragraph 58 of the Complaint.

59. Deny the allegations of paragraph 59 of the Complaint.

60. Deny the allegations of paragraph 60 of the Complaint.

61. Geddes and Broadview incorporate the responses to paragraphs 1-60 of the Complaint by reference.

62. Admit that MVS had a number of ongoing client relationships, and otherwise deny knowledge and information sufficient to form a belief as to the truth of paragraph 62.

63. Deny the allegations of paragraph 63 of the Complaint.

- 64. Deny the allegations of paragraph 64 of the Complaint.
- 65. Deny the allegations of paragraph 65 of the Complaint.
- 66. Deny the allegations of paragraph 66 of the Complaint.
- 67. Geddes and Broadview incorporate the responses to paragraphs

1-66 of the Complaint by reference.

- 68. Deny the allegations of paragraph 68 of the Complaint.
- 69. Deny the allegations of paragraph 69 of the Complaint.
- 70. Geddes and Broadview incorporate the responses to paragraphs

1-69 of the Complaint by reference.

- 71. Deny the allegations of paragraph 71 of the Complaint.
- 72. Deny the allegations of paragraph 72 of the Complaint.
- 73. Deny the allegations of paragraph 73 of the Complaint.
- 74. Deny the allegations of paragraph 74 of the Complaint.

**AFFIRMATIVE DEFENSES**

75. By alleging the matters set forth below, Geddes and Broadview do not thereby allege, admit, or imply that they have the burden of proof with respect to any said matters.

**FIRST DEFENSE**

- 76. Each claim fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

77. Each claim is barred because MVS did not suffer damages.

**THIRD DEFENSE**

78. MVS is barred from seeking legal or equitable relief by the doctrine of unclean hands by virtue of, among other things, its breaches of its legal and contractual obligations to pay Geddes in a timely fashion and other systemic and continuous violations of Geddes's wage and hour rights, including those referenced below.

**FOURTH DEFENSE**

79. MVS is barred from seeking legal or equitable relief by the doctrines of waiver and estoppel by virtue of, among other things, its failure to clarify Geddes's rights and obligations to MVS after he became an intermittent employee.

**FIFTH DEFENSE**

80. The remedies MVS claims to be entitled to are barred by MVS's breaches of its legal and contractual obligations to pay Geddes in a timely fashion, and by MVS's creation of a system whereby there would sometimes be lengthy intervals between the completion of one intermittent period of employment and the start of another.

**SIXTH DEFENSE**

81. MVS's claim for injunctive relief is unwarranted because MVS is unlikely to succeed on the merits and because there is no injury or threat of injury, much less irreparable injury.

**SEVENTH DEFENSE**

82. MVS has failed to mitigate its damages, if any.

**EIGHTH DEFENSE**

83. Any alleged injuries or damages alleged in the claims were caused, in whole or in part, by the acts, omissions, negligence or wrongdoing of MVS, and did not result from any acts, omissions, negligence or misconduct by Geddes or Broadview. MVS is therefore barred from any recovery against Geddes or Broadview, or, in the alternative, any such recovery should be proportionately reduced.

**NINTH DEFENSE**

84. Geddes and Broadview did not engage in any conduct warranting the imposition of punitive damages.

**TENTH DEFENSE**

85. MVS's claims are highly exaggerated and are being used not to obtain relief for damages actually incurred, but to thwart competition and punish Geddes for starting his own business.

## COUNTERCLAIMS AGAINST MVS

Geddes, for his Verified Counterclaims against MVS, alleges as follows:

### FIRST COUNTERCLAIM

#### **Unpaid Overtime in Violation of § 142-2.2 of Title 12 of New York's Codes, Rules and Regulations ("NYCRR") and New York Labor Law ("NYLL") §§ 663(1), 652(1) and 190, et seq.**

86. Geddes incorporates the preceding paragraphs by reference.

87. This Court has subject matter jurisdiction over Geddes's counterclaims pursuant to CPLR § 301, *et seq.*

88. Under NYLL Article 19, "employer" is defined to include "any ... corporation ... acting as employer." NYLL § 651(6).

89. 12 NYCRR § 142-2.14 was enacted pursuant to the NYLL and defines "employee" "any individual employed, suffered or permitted to work by an employer," with various exceptions not relevant here. 12 NYCRR § 142-2.14.

90. Geddes was an employee of MVS, *inter alia*, at all material times herein between July 10, 2014 and June 30, 2017, and an intermittent employee of MVS from about July 21, 2017 to on or about either May 22, 2020 or June 24, 2020, and was paid as such and was classified as such for tax purposes.

91. Throughout his employment with MVS, Geddes was employed by MVS as a real estate appraiser.

92. “[NYLL] § 655 authorizes the wage board to recommend regulations governing overtime, while § 656 directs the Commissioner to either accept or reject any regulations recommended by the wage board, and, pursuant to this delegated authority, there are regulations governing overtime pay.” *Rocha v. Bakhter Afghan Halal Kababs, Inc.*, 44 F. Supp. 3d 337, 351-53 (E.D.N.Y. 2014) (citing §§ 142-2.2, 146-1.4 and *Ahmed v. Subzi Mandi, Inc.*, 2014 U.S. Dist. LEXIS 115228, at \*3 (E.D.N.Y. May 27, 2014) (“NYLL’s overtime provision specifies that eight hours constitutes a ‘legal day’s work,’ NYLL § 160, and that ‘[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s regular rate . . . .’ (citing 12 NYCRR § 142-2.2)), *adopted*, 2014 U.S. Dist. LEXIS 114583 (E.D.N.Y. Aug. 18, 2014).

93. The overtime regulation promulgated by the New York State Commissioner of Labor (12 NYCRR § 142-2.2) provides that “[a]n employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s regular rate in the manner and methods provided in and subject to the exemptions of sections 7 and 13” of 29 U.S.C. § 201, et seq., the Fair Labor Standards Act (“FLSA”).

94. “This regulation has been widely recognized as comprising New York state law.” *Rocha v. Bakhter Afghan Halal Kababs, Inc.*, 44 F. Supp. 3d 337, 351 (E.D.N.Y. 2014); *Ji v. Belle Work Beauty, Inc.*, 2010 NY LEXIS Misc.

3825 at \*18, 2010 NY Slip Op 32166(U) (Sup. Ct. N.Y. Co. 2010) (“[T]he First Department recognized...that a plaintiff can state a cause of action for overtime wages based on a violation of 12 NYCRR § 142-2.2.”) (citing *Anderson v. Ikon Office Solutions, Inc.*, 38 AD3d 317 (1st Dept. 2007)); see also *Bonito v. Avalon Partners, Inc.*, 106 A.D.3d 625, 626 (1<sup>st</sup> Dept. 2013).

95. “Under the regulations implementing the New York Labor Law, non-exempt employees must be paid at a rate of ‘not less than one and one-half times the regular rate at which he is employed’ for any hours worked in excess of forty hours in a given week.” *Thomas v. Meyers Assocs., L.P.*, 39 Misc. 3d 1217(A) (Sup. Ct. N.Y. Co. 2013) (citing 12 NYCRR 142-2.2).

96. “Overtime pay is required ‘regardless of . . . whether the wage is on a commission.’” *Thomas v. Meyers Assocs., L.P.*, 39 Misc. 3d 1217(A) (Sup. Ct. N.Y. Co. 2013) (quoting 12 NYCRR 142-2.9).

97. “Labor Law § 663 authorizes a civil action for overtime wages in accordance with 12 NYCRR 142-2.2.” *Ansah v. A.W.I. Sec. & Investigation, Inc.*, 2014 NY Misc. LEXIS 1690 at \*26 (Sup. Ct. N.Y. Co. 2014) (citing *Stennett v. Moveway Transfer & Stor., Inc.*, 97 A.D.3d 655, 657 (2d Dept. 2012)).

98. Throughout his employment with MVS, Geddes worked as a production employee; his job was to generate appraisal reports.

99. Despite their above-average compensation, real estate appraisers are not exempt professionals because, *inter alia*, their work does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education. *Boyd v. Bank of Am. Corp.*, 109 F. Supp. 3d 1273, 1301 (C.D. Cal. 2015); *Karali v. Branch Banking & Tr. Co.*, 2018 U.S. Dist. LEXIS 167690, at \*16 n.4 (D.N.J. Sep. 28, 2018) (same); 12 NYCRR § 142-2.14 (setting forth New York’s substantially similar regulations).

100. Nor are they exempt administrative employees because, *inter alia*, “rather than involve the ‘general business operations’ of [the employer], the preparation of appraisal reports constitutes the ‘production work’ of [the employer].” *Boyd v. Bank of Am. Corp.*, 109 F. Supp. 3d 1273, 1289 (C.D. Cal. 2015).

101. Accordingly, Geddes was a non-exempt employee, and, as such, was entitled to be paid at the rate of 1½ times his regular rate of pay for all time worked in excess of 40 hours per week.

102. Between 7/10/14 and 6/30/17, Geddes generally worked for MVS between approximately 60 hours per week, except for the following weeks, for which the hours worked are conservatively estimated as follows: week ending 8/08/14 (30 hours); week ending 8/22/14 (50 hours); week ending 1/02/15 (0

hours); week ending 4/03/15 (0 hours); week ending 8/07/15 (20 hours); week ending 1/01/16 (0 hours); week ending 5/13/16 (50 hours); week ending 6/24/16 (20 hours); week ending 8/12/16 (2 hours); week ending 12/2/16 (20 hours); and week ending 12/30/16 (30 hours).

103. Geddes also worked for MVS approximately 44 hours in the week ending 10/27/17.

104. Geddes also worked for MVS approximately 41 hours in the week ending 12/01/17.

105. Geddes also worked for MVS approximately 42 hours in the week ending 12/22/17.

106. Geddes also worked for MVS approximately 50 hours in the week ending 12/29/17.

107. Geddes also worked for MVS approximately 68 hours in the week ending 1/12/18.

108. Geddes also worked for MVS approximately 56 hours in the week ending 1/19/18.

109. Geddes also worked for MVS approximately 60 hours in the week ending 3/09/18.

110. Geddes also worked for MVS approximately 45 hours in the week ending 3/16/18.

111. Geddes also worked for MVS approximately 65 hours in the week ending 3/23/18.

112. Geddes also worked for MVS approximately 70 hours in the week ending 3/30/18.

113. Geddes also worked for MVS approximately 48 hours in the week ending 5/18/18.

114. Geddes also worked for MVS approximately 58 hours in the week ending 5/25/18.

115. Geddes also worked for MVS approximately 55 hours in the week ending 6/15/18.

116. Geddes also worked for MVS approximately 58 hours in the week ending 6/22/18.

117. Geddes also worked for MVS approximately 50 hours in the week ending 7/13/18.

118. Geddes also worked for MVS approximately 56 hours in the week ending 7/20/18.

119. Geddes also worked for MVS approximately 48 hours in the week ending 8/17/18.

120. Geddes also worked for MVS approximately 43 hours in the week ending 9/07/18.

121. Geddes also worked for MVS approximately 60 hours in the week ending 11/02/18.

122. Geddes also worked for MVS approximately 45 hours in the week ending 3/15/19.

123. Geddes also worked for MVS approximately 54 hours in the week ending 3/13/20.

124. No agreement existed between the parties with respect to the payment of overtime for hours worked in excess of 40 in a workweek.

125. MVS failed to comply with, *inter alia*, 12 NYCRR § 142-2.2 and NYLL § 663(1) and § 198 in that Geddes, with MVS's actual and constructive knowledge, generally worked for MVS in excess of 40 hours per week prior to June 30, 2017 and periodically did so after June 30, 2017, but provision was not made by MVS to pay him at the rate of 1½ times his regular rate for the time worked in excess of 40 hours per week.

126. Upon information and belief, MVS is and was at all relevant times herein aware that overtime pay is mandatory for non-exempt employees who work more than 40 hours per week.

127. Accordingly, MVS is liable to Geddes for unpaid overtime and liquidated damages in an amount to be determined at trial (after the pay and other records maintained by MVS concerning Geddes have been provided in discovery,

and after a determination has been made as to what Geddes's "regular rate" of pay was during the periods in question, together with attorney's fees and prejudgment interest.

## SECOND COUNTERCLAIM

### Unpaid Minimum Wages in Violation of 12 NYCRR § 142-2.2 and NYLL §§ 663(1), 652(1) and 190, et seq.

128. Geddes incorporates the preceding paragraphs by reference.

129. Geddes was employed by MVS intermittently between June 30, 2017 and on or about either May 22, 2020 or June 24, 2020 (the "Period of Intermittent Employment").

130. MVS continued to treat Geddes as an employee during those periods within the Period of Intermittent Employment when he performed assignments for MVS.

131. MVS also continued to treat Geddes as an employee for tax purposes throughout the Period of Intermittent Employment.

132. Throughout the Period of Intermittent Employment, MVS paid Geddes on a commission-only basis.

133. "NYLL indisputably requires that employers pay employees minimum wage and overtime on a weekly basis, regardless of whether those employees earn commission in subsequent weeks." *Karic v. Major Auto. Cos.*, 992

F. Supp. 2d 196, 200-01 (E.D.N.Y. 2014) (emphasis in original); 12 NYCRR § 142-2.9 (“The minimum wage provided by this Part shall be required for each week of work regardless of the frequency of payment, whether the wage is a commission, bonus, piece rate or unit rate, or any other basis.”); see also *Olson v. Superior Pontiac-GMC, Inc.*, 765 F.2d 1570, 1579 (11th Cir. 1985) (“The employee must *actually receive* the minimum wage each pay period. On remand, the district court should determine whether Olson was *paid* the minimum wage for each hour worked during each pay period, keeping in mind excess commissions could be carried forward in order to satisfy the minimum wage only if they were paid to Olson in the next pay period.”) (emphasis in original), *mod. on other grounds*, 766 F.2d 265 (11th Cir. 1985); *Perez v. Westchester Foreign Autos, Inc.*, 2013 U.S. Dist. LEXIS 35808, at \*30-31 (S.D.N.Y. Feb. 28, 2013) (to same effect).

134. Moreover, “[i]n 2010, the New York Department of Labor (‘NYDOL’) clarified that, ‘commissions earned by an employee during subsequent weeks within a settlement/pay period may not be used to satisfy the employer’s minimum wage and overtime payments to the employee.’” *Karic v. Major Auto. Cos.*, 992 F. Supp. 2d 196, 200 (E.D.N.Y. 2014) (citing NYDOL opinion letter). “The Labor Department’s interpretation of a statute it is charged with enforcing is entitled to deference” and “‘if not irrational or unreasonable,’

should be upheld.” *Samiento v. World Yacht, Inc.*, 10 N.Y.3d 70, 79 (2008) (giving deference to NYDOL opinion letter).

135. Throughout the Period of Intermittent Employment, MVS was a New York City-based employer with more than 11 employees, and therefore constituted a “large employer” under NYLL § 652(1)(a)(i).

136. As such, MVS was required to pay Geddes not less than the hourly minimum wage (\$11 between 7/21/17 and 12/30/17, \$13 between 12/31/17 and 12/30/18, and \$15 from 12/31/18 onward, NYLL § 652(1)(a)(i)) for each week when he worked for MVS during the Period of Intermittent Employment. 12 N.Y.C.R.R. § 142-2.1(b) (the regulation implementing New York’s minimum wage law, providing, in pertinent part: “The minimum wage shall be paid for the time an employee is permitted to work[.]”).

137. Moreover, “[a]n employee may not waive the protections of the New York labor laws.” *Padilla v. Manlapaz*, 643 F. Supp. 2d 302 (E.D.N.Y. 2009); *Toure v. Thunder Lube Inc.*, 2019 U.S. Dist. LEXIS 169677, at \*13 (E.D.N.Y. Sep. 30, 2019).

138. At or about the inception of the Period of Intermittent Employment, MVS removed Geddes from its regular payroll and discontinued his weekly draw, thereby eliminating a safeguard necessary to prevent him from receiving no wage at all during most of the weeks when he worked for MVS.

139. Accordingly, MVS is liable to Geddes for unpaid minimum wages for hours worked for the following weekly periods ending, together with liquidated damages in an amount to be determined at trial, attorney's fees and prejudgment interest:

<b>Week Ending</b>	<b>Hours Worked (conservatively estimated)</b>
6/30/2017	60
7/28/2017	23
8/4/2017	35
9/15/2017	3
9/22/2017	10
9/29/2017	23
10/20/2017	40
10/27/2017	44
11/3/2017	30
11/10/2017	10
11/17/2017	4
11/24/2017	40
12/1/2017	41
12/8/2017	20
12/15/2017	40
12/22/2017	42
12/29/2017	50
1/5/2018	40
1/12/2018	68
1/19/2018	56
2/2/2018	20
2/9/2018	40
3/9/2018	60
3/23/2018	65
3/30/2018	70
4/6/2018	5
4/13/2018	20
4/20/2018	20

5/4/2018	40
5/18/2018	48
6/1/2018	38
6/15/2018	55
6/29/2018	20
7/13/2018	50
7/20/2018	56
8/3/2018	3
8/10/2018	3
8/17/2018	48
8/31/2018	20
9/7/2018	43
10/5/2018	10
10/12/2018	20
10/26/2018	40
11/2/2018	60
11/9/2018	20
12/14/2018	10
12/21/2018	20
3/8/2019	30
3/15/2019	45
3/22/2019	3
3/29/2019	15
8/16/2019	24
8/23/2019	24
8/30/2019	15
9/6/2019	15
9/20/2019	5
9/27/2019	22
10/4/2019	30
10/18/2019	24
3/6/2020	24
3/13/2020	54
3/20/2020	30
4/24/2020	20
5/1/2020	19
5/15/2020	20
5/22/2020	19

### **THIRD COUNTERCLAIM**

#### **Untimely Paid Wages in Violation of NYLL § 191**

140. Geddes incorporates the preceding paragraphs herein by reference.

141. Throughout the Period of Intermittent Employment (July 21, 2017 to about May 22, 2020 or June 24, 2020), the parties agreed that Geddes would be paid 45% of the amount invoiced for his draft appraisal reports (increased by MVS to 70% in early 2020), and an additional 10% of the amount invoiced for performing certain additional appraisal-related tasks.

142. Geddes earned his commission upon generating a draft or final appraisal report and upon performing the occasional other work for which he was paid.

143. At all material times herein, MVS generally did not pay Geddes until months after his work was performed, even in cases where the client prepaid, and despite having the records needed to pay Geddes's earned commissions in a timely fashion.

144. After not being paid for months, Geddes would periodically prepare a list of payments that had not been made for the work that had been performed months earlier.

145. Even after periodically receiving the list of payments that had not been made for the work that had been performed months earlier, MVS would take further advantage of Geddes (and, upon information and belief, other appraisers in its employ) by spreading the already-late commission payments over multiple future pay periods, giving MVS even more cash flow benefits at employee expense.

146. This practice of substantially delaying Geddes's earned payments was particularly indefensible during the Period of Intermittent Employment because Geddes was paid no draw during that period.

147. NYLL § 191 is a substantive provision of NYLL Article 6 that sets forth the requirements for how often particular classes of employees must be paid.

148. Those statutory protections cannot be waived. NYLL § 191(2); *Watson v. Prentice-Hall, Inc.*, 50 A.D.2d 1077 (4th Dept. 1975).

149. To determine how frequently MVS was required to pay Geddes, one must first determine what class of employees Geddes fits within for purposes of NYLL § 191's timely pay requirement.

150. That can be done by first determining what classes of employees he does *not* fit within.

151. For the reasons discussed above, Geddes’s duties were not those of an executive, administrative or professional employee; nor were his earnings in excess of \$900 per week, because Geddes received no draw after June 30, 2017. As a result MVS’s decision to eliminate Geddes’s draw, Geddes was paid nothing—i.e., less than the \$900 per week exemption threshold (NYLL § 190(7))—in approximately 93% of the weeks when he worked for MVS during the Period of Intermittent Employment. Accordingly, as a matter of law, he could not have been a bona fide executive, administrative or professional employee. *Brewster v. Career & Educ. Consultants, Inc.*, 2018 N.Y. Misc. LEXIS 3510 (N.Y. Sup. 2018) (granting plaintiff’s summary judgment motion and holding that “Defendants could not affirmatively establish that [plaintiff] is a bona fide executive, administrative or professional, whose earnings are in excess of \$900 per week” because “[plaintiff] was paid less than the \$900 per week threshold 72% of the time.”).

152. Likewise, while Geddes was a commission-only employee after July 21, 2020, he was not a “commission salesman” (NYLL § 190(6)) because his principal activity was not selling.

153. Accordingly, Geddes falls under Section 191’s catchall “Clerical and other worker” category, NYLL § 190(7), and, as such, was required

to be paid “not less frequently than semi-monthly [i.e., twice-a-month], on regular pay days designated in advance by the employer.” NYLL § 191(d).

154. As a result of the foregoing, MVS generally delayed the payment of Geddes’s wages for 3-8 months after Geddes performed the work and earned his compensation, and sometimes even longer.

155. MVS is thus liable for not having paid Geddes at least twice-a-month (i.e., semi-monthly) as required by NYLL § 191(d) because “[t]he remedies available through § 198(1-a) [e.g., liquidated damages and attorney’s fees] apply to employees bringing [untimely pay] claims under § 191.” *Duvernoy v. Hercules Med. P.C.*, No. 18cv07652 (DLC), 2020 U.S. Dist. LEXIS 37547, at \*13 (S.D.N.Y. Mar. 3, 2020), citing *Vega v. CM & Assoc. Constr. Mgmt., LLC*, 175 A.D.3d 1144 (1st Dept. 2019).

156. Accordingly, MVS is liable to Geddes for liquidated damages under NYLL §§ 191 and 198(1-a) in an amount to be determined at trial, together with attorney’s fees.

## **FOURTH COUNTERCLAIM**

### **Unpaid Wages in Violation of NYLL Article 6**

157. Geddes incorporates the preceding paragraphs herein by reference.

158. After terminating Geddes, MVS failed to pay several of his earned and due commissions totaling \$8,050, despite having been reminded in writing on September 22, 2020 that they were due and owing.

159. MVS is therefore liable to Geddes for those unpaid commissions, together with liquidated damages, attorney's fees, and prejudgment interest under NYLL §§ 190, 191(3), 193, 195, 198(1-a) and 198(3).

## **FIFTH COUNTERCLAIM**

### **Violations of NYLL § 195's Wage Notice and Paystub Requirements**

160. Geddes incorporates the preceding paragraphs herein by reference.

161. A "rehiring" was effected when Geddes resumed working for MVS on about July 21, 2017, after Geddes tendered his resignation, MVS told him it was not accepting his resignation and took him off the regular payroll and

discontinued his draw, thereby creating a fundamentally altered compensation structure.

162. MVS failed to provide Geddes the notice required by NYLL § 195(1)(a) in connection with his rehiring, and, upon information and belief, failed to do so at any time before he tendered his resignation.

163. Throughout the entire Period of Intermittent Employment (July 21, 2017 to June 24, 2020), MVS failed to provide Geddes with a statement with every payment of wages containing the information required by NYLL § 195(3).

164. For violating NYLL § 195(1)(a) for well in excess of 100 days, MVS is liable to Geddes for \$5,000, together with attorney's fees under NYLL § 198(1-b).

165. For violating NYLL § 195(3) well in excess of 20 days, MVS is liable to Geddes for \$5,000, together with attorney's fees under NYLL § 198(1-d).

**Demand Pursuant to New York Business  
Corporation Law §§ 630 and 624**

Pursuant to New York Business Corporation Law ("BCL") § 630, Geddes hereby demands that MVS permit an examination of its record of shareholders under BCL § 624 so that liability may be personally imposed on their respective top ten shareholders pursuant to BCL § 630 for all debts, wages or salaries due and owing to Geddes for services performed by him to such corporation.

**WHEREFORE**, Geddes respectfully requests a judgment dismissing MVS's claims with prejudice and granting judgment for Geddes on his counterclaims and awarding him damages in amount to be determined at trial, together with such other and further relief as is just and proper.

Dated: New York, New York  
October 7, 2020

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Plaintiff Douglas Geddes and Broadview Valuation  
Services, Inc.*

By: /S/ Scott A. Lucas  
Scott A. Lucas

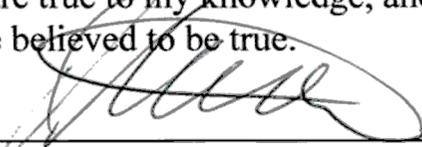
**VERIFICATION**

STATE OF NEW YORK )  
 )  
 ) :SS  
COUNTY OF WESTCHESTER )

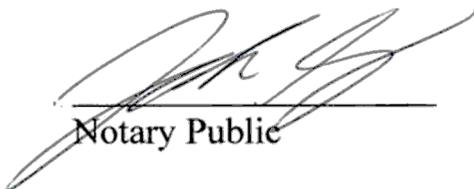
DOUGLAS GEDDES, being duly sworn, deposes and says:

I am the individually-named Defendant and principal of the named corporate Defendant in this action (and on behalf of which this verification is also signed), as well as the Counterclaim-Plaintiff in this action.

I have read the foregoing Verified Answer & Counterclaims and am familiar with the contents thereof. The same are true to my knowledge, and, to the extent pleaded on information and belief, are believed to be true.

  
\_\_\_\_\_  
Douglas Geddes

Sworn to before me on  
October 7, 2020

  
\_\_\_\_\_  
Notary Public

