

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

LUCY BICKERTON, on behalf of herself and all others
similarly situated,

Plaintiff(s),

-against-

CHARLES ROSE and CHARLIE ROSE, INC.

Defendant(s).

Index No.

Summons

Date Index No. Purchased: March 14, 2012

To the above named Defendant(s)

CHARLIE ROSE, INC.
c/o BETH G ZELONY
PO BOX 55, MILLWOOD, NEW YORK, 10546

CHARLES P. ROSE
781 FIFTH AVE, #2204
NEW YORK, NEW YORK, 10022

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is New York County
which is Charlie Rose Inc. is licensed to do business in and maintains its principal offices in New York. Charles Rose is a resident.

Dated: New York, New York

March 14, 2012

OUTTEN & GOLDEN LLP

by Rachel B.

Rachel Bien

Attorneys for Plaintiff

Adam T. Klein
Rachel Bien
Elizabeth Wagoner
Sandra E. Pullman
Outten & Golden LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: 212-245-1000
rmb@outtengolden.com

OUTTEN & GOLDEN LLP
Adam T. Klein
Rachel Bien
Elizabeth Wagoner
Sandra E. Pullman
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: 212-245-1000

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

LUCY BICKERTON, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

CHARLES ROSE and CHARLIE ROSE, INC.,

Defendants.

CLASS ACTION COMPLAINT

Demand for Trial by Jury

Plaintiff Lucy Bickerton, individually and as a class representative on behalf of all others similarly situated, by her attorneys Outten & Golden LLP, makes the following allegations against Defendants Charles Rose and Charlie Rose, Inc. (collectively, “Charlie Rose” or “Defendants”):

INTRODUCTION

1. Charles Rose hosts a prominent and long-running nightly talk show on PBS called “The Charlie Rose Show.” The show airs on over 200 PBS affiliates throughout the country and claims to “engage[] the world’s best thinkers, writers, politicians, athletes, entertainers, business

leaders, scientists and other newsmakers.”¹ The show operates on an annual budget of approximately \$3.5 million, which is low for a television program airing five nights per week.²

2. Central to the show’s lean production are the substantial number of unpaid interns who work on The Charlie Rose Show each day, but are paid no wages. The show’s own website makes clear that “[i]nterns are highly involved with every aspect of running [the] daily television show.”³ Interns perform background research from print and online sources to prepare Mr. Rose for guest interviews, escort guests through the studio and set, and break down the set and clean up the “green room,” the area where guests await their interviews, after each taping. Despite the significant work they perform, Charlie Rose interns are not compensated for any of their work, in violation of the New York Labor Law.

3. Unpaid internships have proliferated among white collar professions, especially in fields like politics, film, fashion, journalism and book publishing.⁴ However, the practice of classifying employees as “interns” to avoid paying wages runs afoul of state wage and hour laws, which require employers to pay all workers who are “permitted or suffered to work” the

¹ The Charlie Rose Show Official Website, <http://www.charlierose.com/about/show/> (last visited Mar. 9, 2012).

² See David A. Kaplan, *Why Business Loves Charlie Rose*, CNN Money, September 28, 2009, available at http://money.cnn.com/2009/09/25/magazines/fortune/charlie_rose.fortune/index.htm?section=money_latest (last visited Mar. 12, 2012).

³ Charlie Rose Official Website, <http://www.charlierose.com/about/show/> (last visited Mar. 12, 2012).

⁴ Ross Perlin, *Unpaid Interns, Complicit Colleges*, N.Y. Times, Apr. 3, 2011, at WK11 (noting that “[t]hree-quarters of the 10 million students enrolled in America’s four-year colleges and universities will work as interns at least once before graduating, according to the College Employment Research Institute”); see also Steven Greenhouse, *The Unpaid Intern, Legal or Not*, N.Y. Times, Apr. 2, 2010, at B1 (“In 2008, the National Association of Colleges and Employers found that 50 percent of graduating students had held internships, up from the 17 percent shown in a 1992 study by Northwestern University.”); see also David C. Yamada, *The Employment Law Rights of Student Interns*, 35 Conn. L. Rev. 215, 217-18 (2002) (“Internship experience has become a virtual requirement in the scramble to get a foot in the door of many sectors of the labor market.”)

minimum wage and overtime.⁵ Employers' failure to compensate interns for their work, and the prevalence of the practice nationwide, curtails opportunities for employment, fosters class divisions between those who can afford to work for no wage and those who cannot, and indirectly contributes to rising unemployment.⁶

4. According to the New York State Department of Labor ("NYSDOL"), an unpaid internship is only lawful in the context of an educational training program, when the interns do not perform productive work and the employer derives no benefit.⁷ "If an employer uses trainees as substitutes for regular workers or to augment its existing workforce during specific times or in general, these interns would be treated as employees."⁸ The NYSDOL's test, mirroring that of the U.S. Department of Labor, is based on the United States Supreme Court's 1947 decision in *Walling v. Portland Terminal Co.*,⁹ which held that the federal definition of "to employ" as "to suffer or permit to work" does not include student participation in an educational or vocational training program, so long as the employer derives no benefit from the trainees' work.¹⁰ The Court cautioned against arrangements "in which an employer has evasively accepted the services of beginners at pay less than the legal minimum without having obtained permits from the [Secretary of Labor]."¹¹

5. Unpaid interns are a crucial labor force on The Charlie Rose Show, where up to ten interns are employed at any given time. As an Editorial Intern on The Charlie Rose Show,

⁵ N.Y. Lab. Law § 2(7).

⁶ See, e.g., Jessica L. Curiale, *America's New Glass Ceiling: Unpaid Internships, the Fair Labor Standards Act, and the Urgent Need for Change*, 61 *Hastings L.J.* 1531, 1534 (2010); David L. Gregory, *The Problematic Employment Dynamics of Student Internships*, 12 *Notre Dame J.L. Ethics & Pub. Pol'y* 227, 240 (1998).

⁷ Maria L. Colavito & Michael Paglialonga, N.Y.S. Dep't. of Labor, Opinion Letter No. 09-0189 (Dec. 21, 2010) at *3-4.

⁸ *Id.* at *6.

⁹ 330 U.S. 148 (1947).

¹⁰ *Id.* at 152.

¹¹ *Id.* at 153.

Plaintiff Lucy Bickerton regularly worked 25 hours a week. She was not paid any wages for her work. By misclassifying Plaintiff and potentially hundreds of workers as unpaid interns, Defendants have denied them the benefits that the law affords to employees, including unemployment, workers' compensation insurance, social security contributions, and, crucially, the right to earn a fair day's wage for a fair day's work.

6. Plaintiff brings this action on behalf of herself and those similarly situated under the New York Labor Law, Art. 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, N.Y. Comp. Codes R. & Regs. tit. 12, Part 142 *et seq.* (collectively, "NYLL") as a class action pursuant to N.Y. CPLR 901.

7. Because Defendants' violations of the law are ongoing, Plaintiff also seeks injunctive relief to ensure that the unlawful policies and practices do not continue.

THE PARTIES

Plaintiff

8. Plaintiff Lucy Bickerton ("Bickerton") is an adult individual who resides in Brooklyn, New York.

9. Bickerton was employed by Defendants as an unpaid intern on The Charlie Rose Show from approximately June 2007 through August 2007.

10. Bickerton is a covered employee within the meaning of the NYLL.

Defendants

11. Throughout the relevant period, Charlie Rose, Inc. and Charles Rose maintained control, oversight, and direction over Plaintiff and those similarly situated, including with respect to hiring and other employment practices that applied to unpaid interns.

12. Throughout the relevant period, Defendants applied the same employment policies, practices, and procedures, including hiring criteria and failure to pay wages, to all unpaid interns who worked on The Charlie Rose Show.

13. Charlie Rose, Inc. and Charles Rose are covered employers within the meaning of the NYLL and, at all relevant times, employed and/or jointly employed Plaintiff and those similarly situated.

Charles Rose

14. Charles Rose is an individual who resides in New York, New York.

15. Charles Rose is the President of Charlie Rose, Inc.

16. Charles Rose is the Executive Producer, Executive Editor, and Host of The Charlie Rose Show.

17. During all relevant times, Charles Rose has been actively involved in managing the day-to-day operations of The Charlie Rose Show.

18. During all relevant times, Charles Rose has had the power to hire and fire Charlie Rose Show employees, including Plaintiff and those similarly situated.

19. During all relevant times, Charles Rose has had the power to determine the work schedules of The Charlie Rose Show employees, including Plaintiff and those similarly situated.

20. During all relevant times, Charles Rose has had the power to determine the compensation of The Charlie Rose Show employees, including that of Plaintiff and those similarly situated.

21. At all relevant times, Charles Rose has been the employer and/or joint employer of Plaintiff and similarly situated employees within the meaning of the NYLL.

Charlie Rose, Inc.

22. Charlie Rose, Inc. is a North Carolina corporation registered with the New York Department of State as an Active Foreign Business Corporation with its principal offices located at 731 Lexington Ave, New York, New York 10022.

23. Charlie Rose, Inc. is a producer of The Charlie Rose Show.

24. During all relevant times, Charlie Rose, Inc. has had control over, and the power to change, compensation policies that applied to The Charlie Rose Show employees, including Plaintiff and those similarly situated.

25. At all relevant times, Charlie Rose, Inc. has been the employer and/or joint employer of Plaintiff and similarly situated employees within the meaning of the NYLL.

JURISDICTION AND VENUE

26. Defendants are subject to personal jurisdiction in New York because Charlie Rose Inc. is licensed to do business here and maintains an office in New York, New York and Charles Rose resides in New York.

27. Venue is proper in this County pursuant to N.Y. CPLR 503 because at least one party resides in this County and Defendant Charlie Rose, Inc. maintains an office here.

28. Assignment to the Commercial Division is warranted because the action asserts a statutory violation arising out of business dealings and meets the monetary threshold of \$150,000, exclusive of punitive damages, interests, costs, disbursements and counsel fees claimed.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings her claims under N.Y. CPLR 901, on behalf of herself and all persons who have worked as unpaid interns for Defendants on The Charlie Rose Show in New

York between March 14, 2006 and the date of final judgment in this matter (the “Intern Class”).

30. Excluded from the Intern Class are Defendants, Defendants’ legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Intern Class.

31. The members of the Intern Class are so numerous that joinder of all members is impracticable.

32. Defendants have acted or have refused to act on grounds generally applicable to the Intern Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

33. Common questions of law and fact exist as to the Intern Class and predominate over any questions affecting only individual members of the Intern Class, and include, but are not limited to, the following:

- (a) Whether Defendants have a policy or practice of failing to pay Plaintiff and the Intern Class minimum wages for all hours worked in violation of NYLL Art. 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations, N.Y. Comp. Codes R. & Regs. tit. 12, §§ 142 *et seq.*, as alleged herein;
- (b) Whether Defendants failed to comply with the notice and recordkeeping requirements of the NYLL;
- (c) Whether Defendants’ policy or practice of failing to pay Plaintiff and the Intern Class was instituted willfully or with reckless disregard for the law; and
- (d) The nature and extent of class-wide injury and the measure of damages for those injuries.

34. Plaintiff’s claims are typical of the claims of the Intern Class she seeks to represent.

35. Plaintiff and the Intern Class members were subject to the same compensation policies and practices of Defendants. Plaintiff and the Intern Class have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

36. Plaintiff will fairly and adequately represent and protect the interests of the Intern Class. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the Plaintiff and members of the Intern Class.

37. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Intern Class have been damaged and are entitled to recovery as a result of Defendants' common and uniform policies, practices, and procedures and as a result of Defendants' violation of the NYLL. Although the relative damages suffered by individual Intern Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. Individual plaintiffs lack the financial resources to conduct a thorough examination of Defendants' compensation practices and to prosecute vigorously a lawsuit against Defendants to recover damages stemming from such practices. In addition, class litigation is superior because it will prevent unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

CLASS-WIDE FACTUAL ALLEGATIONS

38. Plaintiff and the members of the Intern Class have been victims of a common policy and plan perpetrated by Defendants that violated their rights under the NYLL by denying them minimum wages.

39. At all times relevant, Defendants' unlawful conduct, policies, and patterns or

practices described in this Class Action Complaint have been willful.

40. As part of their ongoing business practices, Defendants have intentionally, willfully, and repeatedly harmed Plaintiff and the Intern Class by engaging in a pattern, practice, and/or policy of violating the NYLL as described in this Class Action Complaint.

41. Defendants have failed to pay wages to Plaintiff and the Intern Class.

42. Defendants have benefitted from the work that Plaintiff and the Intern Class performed.

43. Upon information and belief, Defendants would have hired additional employees or required existing staff to work additional hours had Plaintiff and the Intern Class not performed work for Defendants.

44. Defendants did not provide academic or vocational training to Plaintiff or the Intern Class.

45. Defendants failed to pay Plaintiff and the Intern Class minimum wages for all hours worked.

46. Defendants failed to keep accurate or adequate records of hours worked by Plaintiff and the members of the Intern Class as required by the NYLL.

47. Upon information and belief, Defendants' unlawful conduct described in this Class Action Complaint has been pursuant to a corporate policy or practice of minimizing labor costs by denying Plaintiff and the Intern Class compensation in violation of the NYLL.

48. Defendants' unlawful conduct has been widespread, repeated, and consistent.

49. Upon information and belief, Defendants' policies and practices as described herein are ongoing.

50. Defendants' unlawful conduct, as set forth in this Class Action Complaint, has

been intentional, willful, and in bad faith, and has caused significant damages to Plaintiff and the Intern Class.

51. Defendants' deceptive conduct prevented Plaintiff and the members of the Intern Class from discovering or asserting their claims any earlier than they did.

PLAINTIFF'S FACTUAL ALLEGATIONS

Consistent with its policies and patterns or practices as described herein, Defendants harmed Plaintiff individually as follows:

52. From approximately June 2007 through approximately August 2007, Bickerton worked for Defendants as an unpaid intern on The Charlie Rose Show.

53. Bickerton's job title was "Editorial Intern."

54. Bickerton worked approximately 2 to 3 days per week for approximately 25 hours per week.

55. Bickerton's work was supervised by Charlie Rose's staff, including Noel Balnicki, the intern coordinator.

56. Bickerton's job responsibilities as an unpaid intern included, but were not limited to:

- (a) Performing daily background research from print and online sources to prepare Mr. Rose for guest interviews;
- (b) Assembling press packets;
- (c) Greeting the show's guests each day, then escorting them through the studio to makeup, the green room, and the interview set; and
- (d) Breaking down the interview set after daily filming and cleaning up the green room.

57. Bickerton worked alongside other individuals whom Defendants also classified as unpaid interns, who performed productive work and were paid no wages.

58. Plaintiff was paid no wages at all for her work for Defendants.

FIRST CAUSE OF ACTION
New York Labor Law Article 19 – Minimum Wage
(Brought on behalf of Plaintiff and the Intern Class)

59. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

60. Defendants failed to pay Plaintiff and the members of the Intern Class the minimum wages to which they are entitled under the NYLL.

61. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

62. At all times relevant, Plaintiff and the members of the Intern Class were employees and Defendants were employers within the meaning of NYLL §§ 190, 651(5), 652 and the supporting New York State Department of Labor Regulations.

63. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor regulations apply to Defendants and protect Plaintiff and the members of the Intern Class.

64. Defendants were required to pay Plaintiff and the members of the Intern Class minimum wages at the rate of: (a) \$6.75 per hour for all hours worked from January 1, 2006 through December 31, 2006; (b) \$7.15 per hour for all hours worked from January 1, 2007 through July 23, 2009; and (c) \$7.25 per hour for all hours worked from July 24, 2009 through the present, under NYLL § 652 and the supporting New York State Department of Labor regulations.

65. Defendants failed to pay Plaintiff and the members of the Intern Class minimum wages for all hours worked to which they are entitled under the NYLL and the supporting New

York State Department of Labor regulations.

66. By Defendants' knowing or intentional failure to pay Plaintiff and the members of the Intern Class minimum wages for the hours they worked, Defendants have willfully violated the NYLL Art. 19 §§ 650 *et seq.* and the supporting New York State Department of Labor regulations.

67. Due to Defendants' violations of the NYLL, Plaintiff and the members of the Intern Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. The Intern Class is also entitled to receive notice and, after the determination of class-wide liability and of individual back pay and interest, an opportunity to intervene in this action or to file their own suits and petition individually for liquidated damages, and other relief pursuant to NYLL Art. 19, §§ 650 *et seq.*

SECOND CAUSE OF ACTION

New York Labor Law Article 19 – Recordkeeping Violations (Brought on behalf of Plaintiff and the Intern Class)

68. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

69. Defendants failed to make, keep, and preserve accurate records with respect to Plaintiff and the Intern Class, including hours worked each workday and total hours worked each workweek, as required by NYLL §§ 650 *et seq.* and supporting regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of all other similarly situated persons, seeks the following relief:

A. Unpaid minimum wages pursuant to NYLL Art. 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations in an amount that cannot currently

be ascertained but that readily exceeds \$150,000. (Plaintiffs do not seek liquidated damages under the New York Labor Law on behalf of the Class);

- B. Certification of the class set forth above pursuant to N.Y. CPLR 901;
- C. Designation of Plaintiff as class representative and counsel of record as Class Counsel;
- D. Pre-judgment interest and post-judgment interest;
- E. Issuance of a declaratory judgment that the practices complained of in this Class Action Complaint are unlawful under NYLL Art. 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations;
- F. An injunction requiring Defendants to pay all statutorily required wages pursuant to the NYLL and an order enjoining Defendants from continuing its unlawful policies and practices as described herein with respect to the Class;
- G. Reasonable attorneys' fees and costs of the action; and
- H. Such other relief as this Court shall deem just and proper.

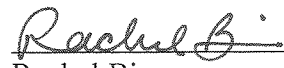
DEMAND FOR TRIAL BY JURY

Pursuant to CPLR § 4101, Plaintiff demands a trial by jury on all questions of fact raised by the Complaint.

Dated: New York, New York
March 14, 2012

Respectfully submitted,
OUTTEN & GOLDEN LLP

By:



Rachel Bien
OUTTEN & GOLDEN LLP
Adam T. Klein
Rachel Bien

Elizabeth Wagoner
Sandra E. Pullman
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Attorneys for Plaintiff and the Putative Class