

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANCISCO QUIROZ-REYES, on behalf of himself
and all others similarly situated,

Plaintiffs,

-against-

MONROE DINER INC., ALEX LAGACOES, an
individual, and STEVEN LAGACOES, an individual,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Docket No.: 12-cv-01518(JPO)

Plaintiff, FRANCISCO QUIROZ-REYES (hereinafter "Reyes" or "Plaintiff"), on behalf of himself and all others similarly situated (collectively as "Plaintiffs" or "Class Action Plaintiffs" or "FLSA Plaintiffs"), by and through his attorneys, The Law Office of Borrelli and Associates, P.L.L.C, bring this action for damages and other legal and equitable relief from Defendants MONROE DINER, INC., ALEX LAGACOES, an individual, and STEVEN LAGACOES, an individual (collectively as "Defendants"), for violations of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.* ("FLSA"); the New York State Labor Law ("Labor Law"); the spread of hours requirement as contained in New York State regulation 12 NYCRR § 142 *et seq.*; the law of conversion; and any other cause(s) of action that can be inferred from the facts set forth herein.

INTRODUCTION

1. This is an action brought by Plaintiffs challenging acts committed by Defendants against Plaintiffs amounting to wage and hour violations, as well as collective and class claims of violations of Federal and New York State wage and hour laws

2. Reyes brings this action on his own behalf and those similarly-situated pursuant to the Federal and New York State laws requiring overtime pay for employees, pay at the legally mandated minimum rate; and proper compensation for spread of hours.
3. Defendants committed violations of these laws by engaging in a systematic scheme of failing to compensate Plaintiff and similarly-situated employees their statutorily required overtime pay, as well as at a rate of pay in accordance with the Federal and State statutorily required minimum rate of pay per hour worked, and proper compensation for spread of hours.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; (iii) under 29 U.S.C. § 201 et. seq.
5. The Court's supplemental jurisdiction is invoked pursuant to 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.
6. Venue is proper in this Court pursuant to 29 U.S.C. §§ 201-219, in as much as this judicial district lies in a State in which the unlawful employment practices occurred. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (c), in that Defendants maintain offices, conduct business and reside in this district.

PARTIES

7. Reyes is a citizen of New York and lives in Orange County.
8. Defendant Monroe Diner Incorporated ("Monroe Diner Inc.") is a corporation organized under the laws of the State of New York and has a principle place of business within Orange County, New York.
9. Monroe Diner Inc. is the holding company that owns Monroe Diner, a restaurant located at 797 State Route 17M, Monroe, NY 10950-2610 ("Monroe Diner").
10. Defendants Alex Lagacoos and Steven Lagacoos are the owners and operators of Monroe Diner Inc. and Monroe Diner.
11. Upon information and belief, the amount of qualifying annual volume of business for Monroe Diner exceeds \$500,000.00 and thus subjects the business to the FLSA's overtime requirements. Additionally, all of Monroe Diner's employees are engaged in interstate commerce as they all handle goods that have been and continue to be moved in interstate commerce. This independently subjects Monroe Diner to the overtime requirements of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

12. Plaintiff seeks to bring this suit pursuant to 29 U.S.C. § 216(b) on his own behalf as well as those in the following class:

Current and former employees of Defendants who perform any work in any of Defendants' locations as non-managerial employees who give consent to file a cause of action to recover overtime compensation which is legally due to them for the time worked in excess of 10 hours per day; and in excess of 40 hours in a given work week, as well as to recover the difference between the amount of wages actually paid to them and the statutorily minimum amount due ("FLSA Plaintiffs").

13. Plaintiff is similarly situated to all such individuals because while employed by Defendants, he and all FLSA Plaintiffs performed similar tasks; were subject to the same laws and regulations; were paid in the same or similar manner; were paid the same or similar rate; were required to work in excess of 10 hours per day, 40 hours per work-week; were not paid the required one and a half (1 ½) times their respective regular rates of pay for overtime hours worked; were not paid any amount at all for overtime hours worked; and were not paid at an amount equal to the minimum hourly required rate of pay per hour worked.
14. Specifically, for the last six (6) years, Plaintiffs were scheduled to work and/or required to work in shifts of approximately 12 hours per day; 72 hours a week; six (6) days per week; and earned \$360.00 per week or, \$5.00 per hour.
15. Defendants treated all FLSA Plaintiffs similarly; specifically requiring them to work in excess of 40 hours per workweek without overtime compensation. Plaintiff and FLSA Plaintiffs work and/or worked for Defendants at their place of business 72 hours a week; earned \$360.00 per week at \$5.00 per hour; and yet Defendants did not pay them the statutorily required overtime compensation. They also worked without being compensated for the legally mandated spread of hours pay and were not compensated at an hourly rate in accordance with the minimum legally required hourly rate of pay.
16. All FLSA Plaintiffs are engaged in interstate commerce as they are required to handle goods that have been and are regularly moved in interstate commerce.
17. Defendants are and have been aware of the requirement to pay Plaintiff and FLSA Plaintiffs at the legally mandated minimum rate of pay for hours worked in a 40 hour

work week; for overtime services provided including spread of hours; and yet Defendants purposefully chose not to abide by them.

RULE 23 CLASS ALLEGATIONS

18. Plaintiff additionally seeks to maintain this action as a class action, pursuant to Fed. R. Civ. P. 23(b)(3), on his own behalf as well as those who are similarly situated and are also FLSA Plaintiffs, who, during the applicable statutes of limitations, were subjected to violations of the New York State Labor Law.

19. Under F.R.C.P. 23(b)(3), Plaintiff must plead that the class:

- a. Is so numerous that joinder is impracticable;
- b. There are questions of law or fact common to the class which predominate any individual questions of law or fact;
- c. Claims or defenses of the representative are typical of the class;
- d. The representative will fairly and adequately protect the class; and,
- e. A class action is superior to other methods of adjudication.

20. The Class which Plaintiffs seek to define includes:

All persons employed by Defendants to perform any work in any of Defendants' locations in any capacity during the statutory period within the State of New York who (1) worked in excess of 40 hours per week and/or worked in excess of 10 hours per day; and were not compensated with overtime pay; and/or (2) were not compensated at a rate in accordance with the minimum rate of hours laws.

Numerosity

21. Upon information and belief, during the previous six (6) years, Defendants have, in total, employed in excess of 20 employees in order to staff Monroe Diner.

Common Questions of Law and/or Fact

22. There are questions of law/fact that govern over the claims which are available to each and every Class Action Plaintiff, including but not limited to the following:
- a. Whether Class Action Plaintiffs worked in excess of 40 hours per week and/or 10 hours per day;
 - b. Whether Class Action Plaintiffs were scheduled to work and/or required to work in shifts of approximately 12 hours per day, six (6) days per week;
 - c. Whether Class Action Plaintiffs were compensated for overtime pay pursuant to Defendants' policies;
 - d. Whether Class Action Plaintiffs were compensated for spread of hours;
 - e. Whether Defendants failed to pay Class Plaintiffs for the hours worked in excess of 40 hours;
 - f. Whether Class Action Plaintiffs were compensated at a rate less than the statutorily required minimum hourly rate of pay;
 - g. Whether Defendants kept accurate records of hours worked by Class Action Plaintiffs; and,
 - h. Whether Defendants have any affirmative defenses for any of these claims.

Typicality of Claims and/or Defenses

23. Plaintiff is employed by Defendants as a Dishwasher in the same capacity as all of Defendants' non-managerial employees entitled to earn at least minimum wage; spread of hours; and time and a half (1 ½) for overtime services performed. At all times Plaintiff worked at Defendants' restaurant as was required. His duties included washing dishes and silverware but he was not compensated at a rate that was equal to the minimum wage

throughout his employment; he was not compensated for his spread of hours for days worked in excess of 10 hours; and he was not paid for overtime services performed. This was the same or similar for all of Defendants' non-managerial employees. Thus, there are common questions of law and fact which are applicable to each and every one of Defendants' non-managerial employees holding those exact or similar non-managerial positions.

24. This treatment included without limitation the failure to compensate non-managerial employees their proper overtime wages; legally mandated spread of hours; and the failure to compensate employees in accordance with the statutorily prescribed minimum rate of pay.

Adequacy

25. The representative party is currently employed by Defendants.
26. Plaintiff fully anticipates the ability to testify under oath as to the services worked and time spent thereof for Defendants and would properly and adequately represent the current and former employees who have been subjected to the treatment alleged herein.
27. Additionally, Plaintiff's attorneys have substantial experience in this field of law.

Superiority

28. Any lawsuit brought by an employee of Defendants would be identical to a suit brought by any other employee for the same violations and separate litigation would cause a risk of inconsistent results.
29. Plaintiff has no facts relating to the class claims that are atypical from those of the class. Indeed, upon information and belief, Plaintiff was treated identically to other employees aside from his individual claim for retaliation.

30. Indeed, because Plaintiff is currently employed by Defendants, he will be able to further represent Class Action Plaintiffs by being able to communicate with fellow co-employees that are still employed by Defendants.

31. Thus, the means of protecting all of Class Plaintiffs' rights is superior to any other method.

FACTS

32. Plaintiff commenced his employment with Defendants at the Defendants' restaurant, Monroe Diner, located at 797 State Route 17M, Monroe, New York 10950-2610, beginning in or around January 1983 as a dishwasher.

33. In the position of Dishwasher, Plaintiff was responsible for washing the dishes and cleaning the silverware used by patrons of the Monroe Diner.

34. While holding the position of Dishwasher, Plaintiff was a full-time employee of Defendants who was expected to work and did in fact worked approximately 12 hours a day; six (6) days a week; and 72 hours per week.

35. For his services, Defendants compensated Plaintiff at a rate of \$360 per week. This compensation is far below the federal and state minimum rate of pay requirements. Additionally, Plaintiff was not compensated in excess of one and a half (1 1/2) times the federal and state minimum rate of pay requirements for the hours he worked in excess of forty (40) hours. Moreover, Plaintiff was not compensated for the legally mandated spread of hours pay for hours worked in excess of 10 hours a day.

36. Defendants paid Plaintiff's wages in cash.

37. Defendants made deductions from Plaintiff's wages for taxes withheld but never reported nor paid said taxes on Plaintiff's behalf.

38. Upon information and belief, Defendants made deductions from Class Action Plaintiffs' wages for taxes withheld but never reported nor paid said taxes on Plaintiffs' behalf.
39. Defendants willfully and intentionally failed to pay Plaintiff his lawful wages.
40. Upon information and belief, Defendants willfully and intentionally failed to pay Class Action Plaintiffs their lawful wages.
41. All of Defendants' non-managerial employees were compensated in a manner similar to the manner in which Defendants compensated Plaintiff while Plaintiff held his non-managerial position.
42. Defendants failed to compensate Plaintiff at the legally mandated minimum rate of pay; for hours worked in excess of 40; and for the legally mandated spread of hours.
43. Defendants failed to pay Plaintiff for his overtime services in any amount at any rate, much less at the statutorily prescribed rate of one and one half times Plaintiff's normal rate of pay.
44. All of Defendants' employees worked similar hours to Plaintiff and they were not compensated at the legally mandated minimum rate; overtime rate for hours worked per week in excess of 40 hours; and spread of hours rate for hours worked in a single day exceeding 10.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**

(For Violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219)

Federal Overtime Pay Violations

45. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

46. Plaintiff and all other non-managerial employees of Defendants were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate of pay, much less at the statutorily required time and a half pay, and were also on average not compensated at the minimum hourly rate of pay, much less at a rate of one and a half (1 ½) times the applicable minimum wage laws. These practices were willful and lasted for the duration of the relevant time periods.

47. These practices are in willful violation of the Fair Labor Standards Act.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**
*(For Violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201-219)
Federal Minimum Wage Violations*

48. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

49. Plaintiff and all other non-managerial employees of Defendants were required to work in without being compensated at the minimum hourly rate of pay.

50. These practices were willful and lasted for the duration of the relevant time periods.

51. These practices are in willful violation of the Fair Labor Standards Act.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**
*(For Violation of the New York Labor Law §§ 650 et. seq.)
New York State Overtime Pay Violations*

52. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

53. Plaintiff and all other non-managerial employees of Defendants were required to work in excess of forty (40) hours a week without being compensated for those hours at any rate

of pay, much less at the statutorily required time and a half pay, and were also on average not compensated at the minimum hourly rate of pay, much less at a rate of one and a half (1 ½) times the applicable minimum wage laws. These practices were willful and lasted for the duration of the relevant time periods.

54. Plaintiff and all other non-managerial employees of Defendants were not compensated in accordance with the New York Labor Law's Spread of Hours Provision.
55. These practices are in willful violation of the New York Labor Law §§ 650 et. seq.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**

56. (For Violation of the New York Labor Law §§ 650 et. seq.)

New York State Minimum Wage Violations

57. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
58. Plaintiff and all other non-managerial employees of Defendants were required to work in without being compensated at the minimum hourly rate of pay.
59. These practices were willful and lasted for the duration of the relevant time periods.
60. These practices are in willful violation of the New York Labor Law.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**

(For violation of 12 N.Y.C.R.R. § 142-2.4)

61. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.
62. Plaintiff and all other non-managerial employees of Defendants were required to work in excess of 10 hours a day without being compensated for the legally mandated spread of

hours pay. These practices were willful and lasted for the duration of the relevant time periods.

63. This practice is in violation of 12 N.Y.C.R.R. § 142-2.4.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS ON
BEHALF OF PLAINTIFF AND ALL CLASS ACTION PLAINTIFFS**

(Conversion)

64. Plaintiff and Class Action Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

65. Plaintiff and Class Action Plaintiffs were paid in cash for their respective wages.

66. Defendants withheld monies from said wages for taxes.

67. Defendants' intentional deduction from plaintiff's paycheck for amounts to pay withheld taxes together with Defendants' subsequent failure to pay such taxes constitutes fraud and conversion.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Action Plaintiffs demand judgment against Defendants as follows:

1. Demand a jury trial on these issues to determine liability and damages;
2. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;
3. A judgment declaring that the practices complained of herein are unlawful and in violation of Fair Labor Standards Act, 29 U.S.C. §§ 201-219; the New York Labor Law §§ 650 et. seq.; and the New York "spread of hours" pay required under 12 N.Y.C.R.R. § 142-2.4.

4. A judgment declaring that the Class Action Plaintiffs are not exempt from the minimum wage and overtime requirements pursuant to 28 U.S.C. § 2201; the Fair Labor Standards Act the Fair Labor Standards Act 29 U.S.C. §§ 201-219; the New York Labor Law §§ 650 et. seq.; and the New York "spread of hours" pay required under 12 N.Y.C.R.R. § 142-2.4

5. All damages which Plaintiff and the Class Action Plaintiffs have sustained as a result of Defendants' conduct, including back pay, front pay, general and special damages for lost compensation and job benefits they would have received but for Defendants' improper practices;

6. An award to the Plaintiff and the Class Action Plaintiffs of compensatory damages, including but not limited to damages for emotional pain and suffering where appropriate;

7. An award to the Plaintiff and Class Action Plaintiffs of pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid wages from the date such wages were earned and due;

8. An award to the Plaintiff and Class Action Plaintiffs for the amount of unpaid wages, including interest thereon, and penalties subject to proof;

9. Exemplary and punitive damages in an amount to commensurate with Defendants' ability and so as to deter future malicious, reckless, and/or intentional where appropriate;


10. Awarding Plaintiff his costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs;

11. Pre-judgment and post-judgment interest, as provided by law; and

12. Granting Plaintiff and Class Action Plaintiffs other and further relief as this Court finds necessary and proper.

Dated: February 28, 2012
Great Neck, New York

Respectfully submitted,
**THE LAW OFFICE OF
BORRELLI & ASSOCIATES, PLLC**
Attorneys for Plaintiffs
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021
(516) 248-5550



DAVID H. ROSENBERG, ESQ. (DR2705)
MICHAEL J. BORRELLI, ESQ. (MB8533)