

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CIV 4294

DAVID MALDONADO, individually and on
behalf of all other persons similarly situated,

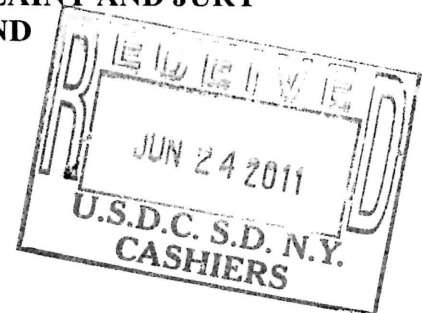
Plaintiff,

–against–

BISTRO 1285 INC. d/b/a BISTRO
CATERERS, and GEORGE JAMIESON,
jointly and severally,

Defendants.

COMPLAINT AND JURY
DEMAND



NATURE OF THE ACTION

1. Plaintiff alleges on behalf of Plaintiff and other similarly situated current and former employees of the Defendants who elect to opt in to this action, pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., that Plaintiff and the Collective Action Members are entitled to (i) unpaid minimum wages from Defendants for hours Plaintiff and the Collective Action Members worked for which Plaintiff was not paid the full minimum wage; (ii) unpaid wages from Defendants for overtime work for which Plaintiff and the Collective Action Members did not receive overtime pay, as required by law; (iii) liquidated damages; and (iv) attorney’s fees and costs of the action.

2. Plaintiff further alleges, pursuant to the New York Labor Law, Art. 6, §§ 190 et seq., and Art. 19, §§ 650 et seq. (collectively “NYLL”), that Plaintiff is entitled to (i) unpaid minimum wages from Defendants for hours Plaintiff worked for which Plaintiff was not paid the full minimum wage; (ii) unpaid wages from Defendants for overtime work for which Plaintiff did not receive overtime pay, as required by law; (iii) unpaid uniform maintenance allowance from Defendants for Plaintiff’s maintaining and laundering of Plaintiff’s required uniforms, 12

N.Y.C.R.R. § 137-1.8 (amended at N.Y.C.R.R. § 146-1.7 effective January 1, 2011); (iv) liquidated damages; (v) and attorney's fees and costs of the action.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337, 1343, and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. The Court has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

COLLECTIVE ACTION ALLEGATIONS

6. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute their FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendants at any time since three years prior to the date of this complaint, to the entry of judgment in this case ("Collective Action Period"), who were non-exempt employees within the meaning of the FLSA and who were not paid minimum wage, or overtime compensation at rates not less than one-half times the regular rate of pay for hours worked in excess of forty per workweek ("Collective Action Members").

7. This collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of Defendants, upon information and belief, there are approximately 25 members of the class during the Collective Action Period, most of whom would not be likely to file individual suits because they lack

adequate financial resources, access to attorneys or knowledge of their claims.

8. Plaintiff will fairly and adequately protect the interests of the Collective Action Members and have retained counsel that is experienced and competent in the fields of employment law and class action litigation. Plaintiff has no interest that is contrary to or in conflict with those members of this collective action.

9. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

10. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all Collective Action Members. Among the common questions of law and fact common to Plaintiff and the Collective Action Members are:

- a. whether Defendants employed the Collective Action Members within the meaning of the FLSA;
- b. what proof of hours worked is sufficient where the employer fails in its duty to maintain time records;
- c. whether Defendants failed to pay the Collective Action Members minimum wage compensation for hours worked, in violation of the FLSA and the regulations promulgated thereunder;
- d. whether Defendants failed to pay the Collective Action Members overtime

compensation for hours worked in excess of forty hours per workweek, in violation of the FLSA and the regulations promulgated thereunder;

e. whether Defendants misused tips in violation of the FLSA and the regulations promulgated thereunder;

f. whether Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA;

g. whether Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and

h. whether Defendants should be enjoined from such violations of the FLSA in the future.

PARTIES

11. Plaintiff David Maldonado was at all relevant times an adult individual residing in Queens County, New York.

12. Upon information and belief, defendant Bistro 1285 Inc. d/b/a Bistro Caterers is a New York corporation with its principal place of business in New York County.

13. Upon information and belief, defendant George Jamieson is a New York State resident.

STATEMENT OF FACTS

14. At all relevant times, Defendants operated a restaurant doing business as Bistro Caterers at 1285 Avenue of the Americas, New York, New York.

15. At all relevant times, defendant George Jamieson was an individual who actively participated in the business of defendant Bistro 1285 Inc. d/b/a Bistro Caterers, exercised

substantial control over the functions of the employees of defendant Bistro 1285 Inc. d/b/a Bistro Caterers, including Plaintiff, and acted directly or indirectly in the interest of an employer.

16. From approximately August 17, 2010 to approximately May 17, 2011, Plaintiff was employed by Defendants as a cook at Defendants' restaurant.

17. Plaintiff worked for Defendants approximately 50 hours per week for a weekly salary of approximately \$350.00.

18. Plaintiff and each of the Collective Action Members were paid less than the applicable minimum wage for many if not all of the hours Plaintiff and each of the Collective Action Members worked.

19. Plaintiff and each of the Collective Action Members worked in excess of 40 hours a week, yet Defendants willfully failed to pay Plaintiff and each of the Collective Action Members overtime compensation.

20. At many if not all times during their employment by Defendants, Defendants failed to launder or maintain the required uniforms, and Plaintiff was required to launder and maintain Plaintiff's uniforms at Plaintiff's expense, and Defendants failed to pay an allowance to Plaintiff for uniform maintenance, as required by NYLL.

21. Upon information and belief, while Defendants employed Plaintiff, Defendants failed to maintain accurate and sufficient time records.

FIRST CLAIM FOR RELIEF:
FAIR LABOR STANDARDS ACT

22. Plaintiff, on behalf of Plaintiff and the Collective Action Members, realleges and incorporates by reference paragraphs 1 through 22 as if they were set forth again herein.

23. At all relevant times, Defendants have been and continue to be, employers engaged in interstate commerce and/or the production of goods for commerce, within the