

meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

24. At all relevant times, Defendants employed Plaintiff and each of the Collective Action Members within the meaning of the FLSA.

25. Upon information and belief, during each of the three years preceding the date of this complaint, Defendants have had gross revenues in excess of \$500,000 per year.

26. Defendants willfully failed to pay Plaintiff and each of the Collective Action Members at the applicable minimum wage, contrary to the requirements of the FLSA, 29 U.S.C. § 206.

27. At all relevant times, Defendants had a policy and practice of refusing to pay overtime compensation to Plaintiff and each of the Collective Action Members for some of Plaintiff's and each of the Collective Action Members' hours worked in excess of forty hours per workweek.

28. As a result of Defendants' willful failure to lawfully compensate Plaintiff and each of the Collective Action Members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, Defendants have violated the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).

29. Due to Defendants' FLSA violations, Plaintiff and each of the Collective Action Members are entitled to recover from Defendants Plaintiff's and each of the Collective Action Members' unpaid minimum wage and overtime compensation, an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

30. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning 29 U.S.C. § 255(a).

SECOND CLAIM FOR RELIEF:
NEW YORK LABOR LAW

31. Plaintiff realleges and incorporates by reference paragraphs 1 through 31 as if they were set forth again herein.

32. At all relevant times, Plaintiff was employed by Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

33. From July 24, 2009, through the present, the applicable minimum wage was \$7.25 per hour, according to N.Y. Labor Law § 652(1).

34. During the time concerned, the uniform maintenance rate for employees working over 30 hours per week was \$9.00 per week, according to N.Y.C.R.R. § 137-1.8 (amended at N.Y.C.R.R. § 146-1.7 effective January 1, 2011).

35. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff the applicable minimum wage for many of the hours worked, in violation of New York Labor Law § 592(1).

36. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff overtime compensation at a rate not less than one and one-half times Plaintiff's hourly wage for each hour worked in excess of forty hours per workweek.

37. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff a uniform maintenance allowance, in violation of the NYLL and N.Y.C.R.R. § 137-1.8 (amended at N.Y.C.R.R. § 146-1.7 effective January 1, 2011).

38. Defendants' NYLL violations have caused Plaintiff irreparable harm for which there is no adequate remedy at law.

39. Due to the Defendants' NYLL violations, Plaintiff is entitled to recover from Defendants Plaintiff's unpaid minimum wage and overtime compensation and uniform

maintenance allowance, damages for unreasonably delayed payment of wages, reasonable attorney's fees, and costs and disbursements of the action, pursuant to the NYLL.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of Plaintiff and the Collective Action Members, respectfully requests that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA opt-in class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual consents to sue pursuant to 29 U.S.C. § 216(b) and appointing Plaintiff and Plaintiff's counsel to represent the Collective Action Members;
- b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the NYLL;
- c. An injunction against the defendant corporation and its officers, agents, successors, employees, representatives and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- d. An award of unpaid minimum wage and overtime compensation due under the FLSA;
- e. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay minimum wage and overtime compensation, pursuant to 29 U.S.C. § 216;
- f. For Plaintiff, an award of unpaid minimum wage and overtime

compensation and uniform maintenance allowance due under the NYLL;

g. For Plaintiff, an award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay minimum wage and overtime compensation and uniform maintenance allowance, pursuant to the NYLL.

h. An award of prejudgment and postjudgment interest;

i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and

j. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff, on behalf of Plaintiff and the Collective Action Members, demands a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
June 23, 2011

By: 

Justin A. Zeller (JZ 7094)

LAW OFFICE OF JUSTIN A. ZELLER, P.C.

277 Broadway, Suite 408

New York, N.Y. 10007-2036

jazeller@zellerlegal.com

Telephone: (212) 229-2249

Facsimile: (212) 229-2246

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT FOR THE
Southern DISTRICT OF New York

David Maldonado
Individually and on behalf of others similarly situated,

Plaintiff,

v.

Bistro 1285 Inc. d/b/a Bistro Caterers, and
George Jamieson, jointly and severally
Defendant(s).

NOTICE OF CONSENT TO JOIN

Pursuant to 29 U.S.C. § 216(B), I, David Maldonado, consent to become a party plaintiff in this action.

David Maldonado
Printed Name

[Signature]
Signature

5/24/11
Date