

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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 ELSA MENDOZA, EDITH PAJARITO, IRMA :
 RECINOS, and ANDRES ROMERO, :
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 Plaintiff, :
 :
 -against- :
 :
 TACO STREET BAR AND KITCHEN INC. d/b/a :
 TACO STREET, GREELEY PIZZA CORP. d/b/a :
 PIZZA STATION, and MIHAILO DARMANOVIC :
 a/k/a DAVID DARMANOVIC, :
 :
 Defendants. :
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COMPLAINT

Plaintiffs Elsa Mendoza, Edith Pajarito, Irma Recinos, and Andres Romero (collectively, "Plaintiffs"), by their attorneys Pechman Law Group PLLC, complaining of Defendants Taco Street Bar and Kitchen Inc. d/b/a Taco Street, Greeley Pizza Corp. d/b/a Pizza Station and Mihailo Darmanovic a/k/a David Darmanovic (collectively, "Defendants"), allege:

NATURE OF THE COMPLAINT

1. Plaintiffs were employed as servers and kitchen and counter workers at Taco Street and Pizza Station located in Chappaqua, New York where they worked as many as 90 hours per week for Defendants. Plaintiffs did not receive overtime pay at one and one half (1 ½) times their regular rate of pay for hours worked over forty, but rather were paid "straight time" rates for all hours worked over forty or a "day rate." In addition, Plaintiffs were not paid spread-of-hours pay, and were not provided with wage notices at the time of their hire or wage statements at the end of each pay period. Also, Plaintiff Romero was paid below the minimum wage during a period of his employment.

2. Plaintiffs bring this action seeking injunctive and declaratory relief against Defendants' unlawful actions and to recover unpaid minimum and overtime wages,

spread-of-hours pay, statutory damages, liquidated damages, pre- and post-judgment interest, attorneys' fees, and costs pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), and the New York Labor Law § 190, *et seq.* ("NYLL") and the NYLL's Wage Theft Prevention Act ("WTPA").

JURISDICTION

3. This Court has subject matter jurisdiction of this case pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331 and 1337, and has supplemental jurisdiction over Plaintiffs' claims under the NYLL pursuant to 28 U.S.C. § 1367.

VENUE

4. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 because Taco Street and Pizza Station are located within the Southern District of New York.

THE PARTIES

Plaintiffs

5. Elsa Mendoza ("Mendoza") resides in Westchester County, New York.
6. Defendants employed Mendoza as a kitchen worker from approximately August 2019 until March 9, 2021.
7. Edith Pajarito ("Pajarito") resides in Bronx County, New York.
8. Defendants employed Pajarito as a kitchen worker and server from approximately January 2008 to February 27, 2019 and then again from on or about August 8, 2019 to January 31, 2021.
9. Irma Recinos ("Recinos") resides in Westchester County, New York.
10. Defendants employed Recinos as a kitchen worker from approximately September 2019 to March 9, 2021.
11. Andres Romero ("Romero") resides in Bronx County, New York.

12. Defendants employed Romero as a counter worker and server from approximately January 2019 to February 1, 2021.

Defendant Taco Street Bar and Kitchen Inc.

13. Defendant Taco Street Bar and Kitchen Inc. is a New York corporation that owns, operates, and does business as Taco Street, a Mexican restaurant located at 86 S. Greeley Ave., Chappaqua, NY 10514.

14. Taco Street is an “enterprise engaged in interstate commerce” within the meaning of the FLSA.

15. Taco Street has employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

16. In the three years preceding the filing of this Complaint, Taco Street has had an annual gross volume of sales in excess of \$500,000.

Defendant Greeley Pizza Corp.

17. Defendant Greeley Pizza Corp. is a New York corporation that owns, operates, and does business as Pizza Station, a pizzeria located at 88 S. Greeley Ave., Chappaqua, NY 10514.

18. Pizza Station is an “enterprise engaged in interstate commerce” within the meaning of the FLSA.

19. Pizza Station has employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

20. In the three years preceding the filing of this Complaint, Pizza Station has had an annual gross volume of sales in excess of \$500,000.

Defendant David Darmanovic

21. Defendant David Darmanovic (“Darmanovic”) is an owner of Taco Street and Pizza Station.

22. Darmanovic supervised and directed Plaintiffs’ work, hired and fired Plaintiffs, determined Plaintiffs’ work schedules, and determined Plaintiffs’ rates of pay.

23. Darmanovic was present overseeing Plaintiffs’ work on a daily basis and also regularly communicated with them via text about their schedules and work responsibilities.

24. Darmanovic signed Plaintiffs’ paychecks and distributed them on a weekly basis.

25. Darmanovic exercised sufficient control over Taco Street and Pizza Station operations to be considered Plaintiffs’ employer under the FLSA and the NYLL.

Taco Street and Pizza Station Were Plaintiffs’ Joint Employers

26. Taco Street and Pizza Station have a high degree of interrelated and unified operations, centralized control of labor relations, common control, common business purposes, interrelated business goals, and common ownership.

27. Taco Street and Pizza Station are located directly next door to one another and regularly interchange and share employees.

28. Pajarito worked at Pizza Station from the start of her employment with Defendants through February 2019 and then, at Darmanovic’s request, she began at Taco Street when it opened and worked from August 8, 2019 to January 31, 2021.

29. Upon information and belief, there is common purchasing for Taco Street and Pizza Station.

30. Darmanovic regularly instructed Plaintiffs to share ingredients and cleaning products between the Taco Street and Pizza Station kitchens and also instructed

Plaintiffs and other workers to fill in as needed if business was busier than usual at either Taco Street or Pizza Station.

31. Darmanovic signed and distributed the weekly pay to Plaintiffs when they worked at both Taco Street and Pizza Station.

32. Darmanovic is the owner of both Taco Street and Pizza Station and is sued individually in his capacity as an owner, officer and/or agent of both restaurants.

FACTUAL ALLEGATIONS

33. Plaintiffs' duties as employees for Defendants included preparing and serving food and drinks, accepting and preparing take-out orders received via phone and internet, cleaning the restaurant, and other miscellaneous tasks.

34. Neither Taco Street nor Pizza Station have a timeclock installed to officially record the hours that Plaintiffs worked.

35. Plaintiffs generally took 10-15 minute breaks when business was slow but they were not allowed to leave the premises and there was no officially designated break time.

Elsa Mendoza

36. From the start of her employment in or about August 2019 through September 2020, Mendoza regularly worked five days per week. She was regularly scheduled to work from 10:00 a.m. to 3:00 p.m. five days per week, but often worked until 5:00 or 6:00 p.m.

37. From on or about October 6, 2020 through approximately December 15, 2020, Mendoza regularly worked seven days per week from about 10:30 a.m. to 9:30 p.m. for a total of approximately seventy-seven hours per workweek.

38. From in or about December 16, 2020 until approximately January 25, 2021, Mendoza regularly worked six days per week from about 10:30 a.m. to 9:30 p.m. for a total of approximately sixty-six hours per workweek.

39. From in or about January 26, 2021 through the end of her employment, Mendoza regularly worked five days per week from about 10:30 a.m. to 9:30 p.m. for total of approximately fifty-five hours per workweek.

40. At the start of her employment, Defendants paid Mendoza a “day rate” of \$60 per day in cash.

41. Mendoza received periodic raises throughout her employment, and at the time of her termination she was paid \$95 per day by check.

42. Throughout her employment, Mendoza did not receive payment of overtime wages at one and one-half times her regular rate of pay for hours worked over forty per week.

Edith Pajarito

43. Pajarito began working at Pizza Station in January 2008. From January 2008 through approximately March 2016, she regularly worked part-time, Fridays from 5:00 p.m. to 9:30 p.m., and Saturdays and Sundays from 10:00 a.m. to 9:00 p.m., for a total of approximately twenty-six and a half hours per workweek.

44. Starting in or about April 2016 through about December 2016, Pajarito regularly worked five days per week from 11:00 a.m. to 9:00 p.m., for a total of approximately fifty hours per workweek.

45. From in or about January 2017 through July 2017, Pajarito regularly worked six days per week from 10:00 a.m. to 9:30 p.m., for a total of approximately sixty-nine hours per workweek.

46. From in or about August 2017 through October 2017, Pajarito regularly worked seven days per week from 10:00 a.m. to 9:30 p.m., for a total of approximately eighty and a half hours per workweek.

47. From in or about November 2017 through February 27, 2019, Pajarito regularly worked six or seven days per week from 10:00 a.m. to 9:30 p.m., for a total of approximately sixty-nine to eighty and a half hours per workweek.

48. Pajarito did not work for Defendants from February 28, 2019 to August 6, 2019.

49. From August 7, 2019 through February 2021, Pajarito worked at Taco Street four days per week, Wednesdays and Thursdays from 5:00 p.m. to 9:30 p.m. and Saturdays and Sundays from 10:00 a.m. to 9:30 p.m., for a total of approximately thirty-two hours per workweek.

50. At the start of the NYLL statutory period in 2015, Defendants paid Pajarito \$8.00 per hour in cash.

51. Beginning in or about January 2016, Defendants paid Pajarito \$10.00 per hour in cash.

52. In or about January 2017, Defendants gave Pajarito a raise to \$12.00 per hour. She received her weekly pay partially by check and partially in cash.

53. In August 2019 when Pajarito began working at Taco Street, she was paid \$15.00 per hour by check.

54. Defendants paid Pajarito the same "straight time" hourly wage for all the hours she worked per week, including hours over forty.

55. Pajarito did not receive payment of overtime wages at one and one-half times her regular rate of pay for the hours she worked over forty per week.

Irma Recinos

56. From the start of her employment through November 2019, Recinos regularly worked five days per week from 10:00 a.m. to 9:30 p.m., for a total of approximately fifty-seven and a half hours per workweek.

57. Recinos worked seven days per week during the entire month of April 2020 due to a coworker being out sick, working from approximately 10:00 a.m. to 9:30 p.m. for an approximate total of eighty and a half hours per workweek.

58. Throughout the rest of her employment, Recinos regularly worked six days per week from approximately 10:00 a.m. to 9:30 p.m. for an approximate total of sixty-nine hours per week.

59. Defendants paid Recinos a day rate of \$100 per day from the start of her employment through about November 2020. This payment was in cash.

60. From about December 2020 through the end of her employment, Defendants paid Recinos an additional \$20 per week on top of the \$100 per day that she received. Because she usually worked 6 days per week, she regularly received payment of \$620 per week. This payment was by check.

61. Defendants did not pay Recinos overtime wages at one and one-half times her regular rate of pay for hours worked over forty per week.

Andres Romero

62. Throughout his employment, Romero regularly worked seven days per week from approximately 10:00 a.m. to 9:30 p.m., for a total of approximately eighty and a half hours per workweek.

63. In the summer months, from approximately June 1 to August 31, Romero regularly worked seven days per week from approximately 9:00 a.m. to 10:00 p.m., for a total of approximately ninety-one hours per workweek.

64. Defendants paid Romero \$13.00 per hour throughout the entirety of his employment. This was paid by check.

65. In 2021, Romero was paid below the statutory minimum wage rate of \$14.00 per hour for all Westchester County businesses.

66. Throughout his employment, Romero was paid the same "straight time" hourly wage for all the hours he worked per week, including hours over forty.

67. Romero did not receive payment of overtime wages at one and one-half times his regular rate of pay for hours worked over forty per week.

Allegations Applicable to All Plaintiffs

68. Defendants did not provide Plaintiffs with spread-of-hours pay, an extra hour of wages at the full minimum wage rate, on days that their shifts exceeded ten hours, as required by the NYLL.

69. Defendants did not furnish Plaintiffs with wage statements with each payment of wages as required by the NYLL.

70. Defendants did not furnish Plaintiffs with wage notices at the time of hiring or when their rates of pay changed that, *inter alia*, accurately reflected their rate or rates of pay and number of hours worked per workweek, as required by the NYLL.

FIRST CLAIM NYLL – Unpaid Minimum Wages

71. Plaintiffs repeat and reallege all foregoing paragraphs as if fully set forth herein.

72. Defendants are employers within the meaning of the NYLL §§ 190, 651(5), 652, and supporting New York State Department of Labor ("NYDOL") Regulations and employed Plaintiffs.

73. The NYLL and its supporting regulations require that employers pay employees at least the minimum wage for each hour worked up to forty per workweek.

74. The minimum wage provisions of Article 19 of the NYLL and the supporting NYDOL Regulations apply to Defendants.

75. Defendants failed to pay Plaintiff Romero the minimum wages to which he was entitled under the NYLL.

76. Defendants have willfully violated the NYLL by knowingly and intentionally failing to pay Plaintiff Romero minimum hourly wages.

77. As a result of Defendants' violations of the NYLL, Plaintiff Romero is entitled to recover his unpaid wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre- and post-judgment interest.

SECOND CLAIM
Fair Labor Standards Act – Unpaid Overtime Wages

78. Plaintiffs repeat and incorporate all foregoing paragraphs as if fully set forth herein.

79. Defendants were employers within the meaning of 29 U.S.C. §§ 203(e) and 206(a), and employed Plaintiffs.

80. Defendants were required to pay Plaintiffs one and one-half (1½) times the greater of their regular rate or the full federal minimum wage rate for all hours worked in excess of forty hours in a workweek pursuant to the overtime wage provisions set forth in the FLSA, 29 U.S.C. § 207, et seq.

81. Defendants failed to pay Plaintiffs the overtime wages to which they were entitled under the FLSA.

82. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay Plaintiffs the proper overtime wage rate.

83. Due to Defendants' violations of the FLSA, Plaintiffs are entitled to recover unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre- and post-judgment interest.

THIRD CLAIM
New York Labor Law – Unpaid Overtime Wages

84. Plaintiffs repeat and incorporate all foregoing paragraphs as if fully set forth herein.

85. Defendants were Plaintiffs' employers within the meaning of the NYLL §§ 190, 651(5), 652, and supporting New York State Department of Labor Regulations.

86. Under New York State Department of Labor ("NYDOL") regulations, including 12 N.Y.C.R.R. §§ 137-1.3, 146-1.4, Defendants were required to pay Plaintiffs one and one-half (1 ½) times their regular rate of pay for all hours worked in excess of forty per workweek.

87. Defendants failed to pay Plaintiffs the overtime wages to which they were entitled to under the NYLL and its supporting regulations.

88. Defendants willfully violated the NYLL and its supporting regulations by knowingly and intentionally failing to pay Plaintiffs overtime wages.

89. Due to Defendants' willful violations of the NYLL, Plaintiffs are entitled to recover unpaid overtime wages, reasonable attorneys' fees and costs of the action, liquidated damages, and pre- and post-judgment interest.

FOURTH CLAIM
New York Labor Law – Unpaid Spread of Hours Pay

90. Plaintiffs repeat and reallege all foregoing paragraphs as if fully set forth herein.

91. Defendants willfully failed to pay Plaintiffs additional compensation of one hour of pay at the basic minimum hourly wage rate for each day during which their shifts spread over more than ten hours.

92. By failing to pay Plaintiffs spread-of-hours pay, Defendants willfully violated Section 650 of the NYLL and the supporting NYDOL regulations, including, but not limited to, 12 N.Y.C.R.R § 146-1.6.

93. Due to Defendants' willful violations of the NYLL, Plaintiffs are entitled to recover an amount prescribed by statute, reasonable attorneys' fees and costs of the action, pre- and post-judgement interest, and liquidated damages.

FIFTH CLAIM
NYLL Wage Theft Prevention Act - Failure to Provide Wage Statements

94. Plaintiffs repeat and reallege all foregoing paragraphs as if fully set forth herein.

95. The NYLL and the WTPA require employers to provide employees with an accurate wage statement each time they are paid.

96. Throughout Plaintiffs' employment with Defendants, Defendants paid Plaintiffs without providing them a wage statement at the end of every pay period accurately listing, inter alia, the regular and overtime rate or rates of pay; the number of regular and overtime hours worked per pay period; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages, in violation of NYLL § 195(3).

97. Due to Defendants' violation of NYLL § 195(3), Plaintiffs are entitled to recover, from Defendants, statutory damages, reasonable attorneys' fees, and costs of the action, pursuant to NYLL § 198(1-d).

SIXTH CLAIM

NYLL Wage Theft Prevention Act - Failure to Provide Wage Notices

98. Plaintiffs repeat and reallege all foregoing paragraphs as if fully set forth herein.

99. The NYLL and the WTPA, as well as the NYLL's interpretive regulations, such as but not limited to 12 N.Y.C.R.R. Part 146, require employers to provide all employees with a written notice of wage rates at the time of hire and whenever there is a change to an employee's rate of pay.

100. Defendants failed to furnish Plaintiffs at the time of hiring, or whenever their rate of pay changed, with a wage notice containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage including tip, meal, or lodging allowances; the regular payday designated by the employer in accordance with NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business and a mailing address if different; the telephone number of the employer, and anything otherwise required by law; in violation of the NYLL § 195(1).

101. Due to Defendants' violation of NYLL § 195(1), Plaintiffs are entitled to recover from Defendants statutory damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment:

- a. declaring that Defendants have violated the minimum wage provisions of the NYLL;
- b. declaring that Defendants have violated the overtime wage provisions of the FLSA, the NYLL, and the NYDOL regulations;
- c. declaring that Defendants violated the spread-of-hours pay provision of the NYLL and NYDOL Regulations;
- d. declaring that Defendants violated the notice and record-keeping provisions of the NYLL and WTPA;
- e. declaring that Defendants' violations of the FLSA and the NYLL were willful;
- f. enjoining future violations of the FLSA and NYLL by Defendants;
- g. awarding Plaintiffs damages for unpaid minimum and overtime wages;
- h. awarding Plaintiffs unpaid spread-of-hours pay;
- i. awarding Plaintiffs statutory damages as a result of Defendants' failure to furnish them with accurate wage statements pursuant to the NYLL and WTPA;
- j. awarding Plaintiffs liquidated damages in an amount equal to the total amount of wages found to be due pursuant to the FLSA and NYLL;
- k. awarding Plaintiffs pre-judgment and post-judgment interest under the NYLL;
- l. awarding Plaintiffs reasonable attorneys' fees and costs pursuant to the FLSA and the NYLL; and

m. awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 13, 2021

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