

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LILIANA CHRISTENSEN, FATMIR BUJUPAJ,
BRYAN ALEXANDER ALVARADO ELIAS,
and ALEKO NUKU

Plaintiffs,

v.

GW ASSOCIATES OF NY INC (d/b/a THE
MARINA GRILLE), WILLY RAY WINE
CORP. (d/b/a THE GNARLY VINE), JENNIFER
O’LEARY, and WILLIAM LEON

Defendants.

**ECF Case
Civil Action No.
COMPLAINT
JURY TRIAL DEMNDED**

COMPLAINT

Defendants own and operate a restaurant and wine bar in New Rochelle, New York, and have conducted a years-long scheme of denying their employees minimum wage, overtime compensation and earned tips. Plaintiffs Liliana Christensen, Fatmir Bujupaj, Bryan Alexander Alvarado Elias, and Aleko Nuku (“Plaintiffs”) bring this Complaint against defendants GW Associates of NY Inc (d/b/a The Marina Grille), Willy Ray Wine Corp. (d/b/a The Gnarly Vine), Jennifer O’Leary, and William Leon (together, “Defendants”), to recover unpaid wages, wrongly withheld tip payments, liquidated damages, reasonable attorneys’ fees, costs, and other relief as appropriate under Section 16(b) of the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (the “FLSA”) and the New York Labor Law § 652 *et seq.*

PARTIES AND JURISDICTION

1. Defendant GW Associates of NY Inc. is a New York corporation which operates a restaurant under the trade name “The Marina Grille,” located at 290 Drake Avenue, New Rochelle,

NY 10801. GW Associates of NY Inc. is owned and operated by Defendants Jennifer O’Leary and William Leon.

2. Defendant Willy Ray Wine Corp. is a New York corporation which operates a wine bar under the trade name “The Gnarly Vine,” located at 501 Main Street, New Rochelle, NY 10801. Wily Ray Wine Corp. is owned and operated by Defendants Jennifer O’Leary and William Leon.

3. Defendant Jennifer O’Leary co-owns and operates the Marina Grille and the Gnarly Vine. Defendant O’Leary supervised Plaintiffs’ work and pay during Plaintiffs’ employment at the Marina Grille and the Gnarly Vine, and Plaintiffs’ employer during all times relevant to the claims herein. Defendant O’Leary resides at 737A Pelham Road, New Rochelle, New York, 10805.

4. Defendant William Leon co-owns and operates the Marina Grille and the Gnarly Vine, and was Plaintiffs’ employer at all times relevant to the claims herein. Defendant Leon resides at 737A Pelham Road, New Rochelle, New York, 10805.

5. Plaintiff Liliana Christensen is a resident of the Bronx, New York and worked as a server at the Marina Grille for approximately six months in 2017.

6. Plaintiff Fatmir Bujupaj is a resident of New Rochelle, New York and worked as a server at both the Marina Grille and the Gnarly Vine beginning in 2015 until the first half of 2018.

7. Plaintiff Bryan Alexander Alvarado Elias is a resident of New Rochelle, New York and worked as a busboy and server at both the Marina Grille and the Gnarly Vine beginning in 2015 until the first half of 2018.

8. Plaintiff Aleko Nuku is a resident of Yonkers, New York and worked as a bartender at both the Marina Grille and Gnarly Vine beginning in 2015 until 2017.

9. This Court has subject matter jurisdiction over Plaintiffs' FLSA claims pursuant to 28 U.S.C. § 1331, which confers jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1337, which confers federal jurisdiction over "any civil action or proceeding arising under any Act of Congress regulating commerce."

10. This Court has supplemental jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367(a), which confers federal subject matter jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." As discussed below, Plaintiffs' state-law claims arise from a common set of operative facts—*i.e.*, their employment by Defendants in New Rochelle, New York—and are so related to the claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy.

11. Venue is proper pursuant to 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTS

12. Plaintiffs worked as servers, busboys and bartenders at Marina Grille and Gnarly Vine.

13. Defendants willfully paid Plaintiffs for their services and labor at a rate below the applicable minimum hourly wage, in violation of the FLSA, 29 U.S.C §§ 206 and 207, and the New York Minimum Wage Act, N.Y. Lab. Law § 650 et seq.

14. Plaintiffs regularly worked in excess of 40 hours a week and more than 10 hours in a day yet Defendants willfully failed to pay Plaintiffs overtime pay of one and one-half times their regular hourly rate, and for an extra hour in each day worked over ten hours, in violation of the FLSA and the New York Minimum Wage Act.

15. Paychecks were provided to Plaintiffs on a very irregular basis, often with one month between payments and after numerous requests for payment. When paychecks were provided to Plaintiffs they were for far less than either the New York minimum wage or the federal minimum wage for all hours worked.

16. Plaintiffs received money as tips from Defendants' customers. At no time did any of the Defendants inform the Plaintiffs that these tips were to be credited towards the payment of the minimum wage, and Defendants have explicitly disavowed a policy of taking a tip credit towards the payment of the required federal and state minimum wage. Defendants did not allow Plaintiffs to keep a substantial portion of the tips they received during their shifts. Instead, tips were put into a tip pool and distributed by Defendants, often to non-traditionally tipped employees, such as dishwashers. Additional portions of the tip pool were retained by Defendants.

COUNT I - VIOLATION OF FLSA MINIMUM WAGE AND OVERTIME PROVISIONS

17. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

18. Section 206(a) of the FLSA provides that “[e]very employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages . . . not less than . . . \$7.25 an hour.”

19. Section 207(a)(1) of the FLSA provides that “no employer shall employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

20. Plaintiffs were “employees” and Defendants were their “employers” under the FLSA, § 203.

21. Defendants violated the FLSA by knowingly and willfully failing to compensate Plaintiffs at a rate equal to or greater than \$7.25 for all hours worked and at a rate of time-and-one-half their regular hourly rate for every hour worked in excess of 40 hours per week. This was done by failing to pay Plaintiffs the minimum wage and overtime premium on payday and by taking their tips for a mandatory invalid tip pool.

22. Defendants' violations of the FLSA were repeated, willful, intentional, and in bad faith.

23. Defendants are liable to Plaintiffs under the FLSA § 216(b), for all unpaid wages, all wrongly withheld tips, liquidated damages, interest (both pre- and post- judgment), attorney's fees, costs, and any other and further relief this Court deems appropriate.

COUNT II - VIOLATION OF NEW YORK LABOR LAW

24. Plaintiffs reallege and incorporate by reference the allegations set forth above.

25. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of the New York Labor law, §§ 2 and 651.

26. Defendants violated Plaintiffs' rights by failing to pay Plaintiffs at the applicable minimum hourly wage, in violation of New York Minimum Wage Act (Article 19 of the New York Labor Law). This was done by failing to pay Plaintiffs the minimum wage on payday and by taking their tips for a mandatory invalid tip pool. Defendants' violations were repeated, willful, intentional, and in bad faith.

27. Defendants violated Plaintiffs' rights by failing to pay Plaintiffs overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, and an additional hour of pay for each hour worked in excess of ten in one day, in violation of the New York Minimum Wage Act and its regulations.

This was done by failing to pay Plaintiffs the required overtime compensation on payday and by taking their tips for a mandatory invalid tip pool. Defendants' violations were repeated, willful, intentional, and in bad faith.

28. Defendants' New York Labor Law violations have caused Plaintiffs irreparable harm for which there is no adequate remedy at law.

29. Due to Defendants' New York Labor Law violations, Plaintiffs are entitled to recover from Defendants all unpaid wages, all wrongly withheld tips, liquidated damages, interest (both pre- and post- judgment), attorney's fees, costs, and any other and further relief this Court deems appropriate, pursuant to N.Y. Labor L. § 663(1).

PRAYER FOR RELIEF

30. Plaintiffs respectfully request that the Court:

- a. Declare Defendants' conduct complained of herein to be in violation of the Plaintiffs' rights under the FLSA and the New York Labor Law;
- b. Award Plaintiffs unpaid wages, the value of wrongly withheld tips, liquidated damages, interest (both pre- and post- judgment), attorneys' fees and costs as a result of Defendants' willful and intentional violations of the FLSA and the New York Labor Law;
- c. Enjoin Defendants from continuing to violate the FLSA and the New York Labor Law; and
- d. Grant Plaintiffs such further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all questions of fact raised by the Complaint.

Dated: June 27, 2018

Respectfully submitted,

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