

JUDGE TORRES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ISIDORA PINZON,

Plaintiff,

- against -

553 LA MINA SUPERMARKET, INC.,
MANUEL A. LARA and HELEN S. LARA,

Defendants.
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Civil Docket No.

COMPLAINT

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
JAN 21 2016

Plaintiff Isidora Pinzon (hereinafter "Plaintiff" or "Ms. Pinzon"), by her attorneys MFY Legal Services, Inc., alleges as follows:

NATURE OF THE ACTION

1. Ms. Pinzon brings this action to recover years of unpaid wages for work she performed for 553 La Mina Supermarket, Inc. ("the Company"), Manuel A. Lara ("Mr. Lara"), and Helen S. Lara ("Ms. Lara") (collectively "the Defendants").

2. Ms. Pinzon worked for approximately seven years at La Mina Supermarket, a grocery store owned and operated by the Defendants. Despite Ms. Pinzon working six to seven days a week as a bagger, stocker, cleaner and delivery person, approximately 12 to 14-and-a-half hours a day, the Defendants did not pay her any wages other than a handful of sub-minimum wage payments on two occasions over the years. Ms. Pinzon's only earnings from the job came from the tips – mostly small change – she received from customers, which amounted to approximately \$30 to \$40 a day.

3. For the duration of Ms. Pinzon's employment, from July 2008 to on or around March 17, 2015, the Defendants failed to pay her the legally required minimum wage, overtime

and “spread of hours” wages for her work. The Defendants also failed to provide Ms. Pinzon with the legally required notices of her regular rate of pay, overtime rate of pay, and hours worked.

4. Ms. Pinzon brings this action to remedy the Defendants’ failure to pay minimum wage, overtime, and spread of hours, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, New York Labor Law (“NYLL”) §§ 190 and 650, *et seq.*, 12 NYCRR §§ 142-2.1, 142-2.2, 142.2.4, and applicable regulations.

5. Ms. Pinzon seeks declaratory relief, unpaid wages for work performed, liquidated damages, statutory damages, as well as reasonable attorney’s fees, costs of this action, pre- and post-judgment interest, and other appropriate relief pursuant to the FLSA and NYLL.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the FLSA claims set forth herein pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

7. This Court has supplemental jurisdiction over the NYLL claims set forth herein pursuant to 28 U.S.C. § 1367, because those claims closely relate to the federal claims, having arisen from a common nucleus of operative facts, such that they form part of the same case or controversy.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District and because the Defendants operate their business in this District.

PARTIES

9. Ms. Pinzon is a 54-year-old Mexican immigrant who lives in Upper Manhattan with her husband, her niece, and her niece’s four-year-old son.

10. Ms. Pinzon worked for the Defendants at La Mina Supermarket (“La Mina” or “the store”), a grocery store located at 553 West 157th Street, New York, New York 10032, from around July 2008 until on or around March 17, 2015. Even though her first name is “Isidora,” Ms. Pinzon was commonly referred to as “Dolores” on the job, by Defendants Helen and Manuel Lara, and by La Mina employees. For ease of identification, the Complaint refers to her only as Ms. Pinzon.

11. Defendant 553 La Mina Supermarket, Inc. (“the Company”) is a New York business corporation with its principal place of business at 553 West 157th Street, New York, New York 10032. Upon information and belief, the Company was incorporated on March 14, 2002.

12. Defendant Helen Lara (“Ms. Lara”) is the Company’s Chief Executive Officer, and her usual place of business is 553 West 157th Street, New York, New York 10032. Upon information and belief, Ms. Lara is co-owner of the Company. Ms. Lara is sued in her individual capacity as Ms. Pinzon’s employer. Ms. Lara also goes by “Susana” and is called Susana by many of the employees at La Mina. For ease of identification, this Complaint refers to her only as Ms. Lara.

13. Defendant Manuel Lara (“Mr. Lara”) is Ms. Lara’s husband, and, upon information and belief, co-owner of the Company. Mr. Lara is sued in his individual capacity as Ms. Pinzon’s employer.

14. During all times relevant to this action, the Defendants were Ms. Pinzon’s employers within the meaning of the FLSA and the NYLL.

15. During all times relevant to this action, Ms. Pinzon was the Defendants’ employee, within the meaning of the FLSA and the NYLL.

16. During all times relevant to this action, and as described below, the Defendants had the power to hire and fire Ms. Pinzon, control the terms and conditions of her employment, maintain employment records and determine the rate and method of any compensation provided to Ms. Pinzon.

17. Upon information and belief, and as described below, the Company is an enterprise engaged in commerce whose gross annual revenue is at least \$500,000. As more fully described below, the Company's employees handle goods and materials that have moved in commerce, including food, beverages and grocery items from out-of-state suppliers.

STATEMENT OF FACTS

18. On or around July 2008, Ms. Lara hired Ms. Pinzon to work at La Mina, a grocery store owned and operated by the Defendants.

19. La Mina is a full-service supermarket that sells a variety of food and beverage products, including meat, produce, dairy, baked goods, canned and packaged food, candy, beer, coffee, tea and juices. It also sells non-food items such as household cleaners, kitchenware, laundry products, bathroom products and pet supplies. The store is divided into five aisles and has meat and deli counters. There are generally two checkout lines open at a given time, with a third available for particularly busy periods.

20. Including Ms. Pinzon, the Defendants employed approximately eight people at La Mina, including two butchers, two checkout workers, two grocery baggers, and two workers in charge of maintaining and re-stocking the aisles.

21. Ms. Lara assigned Ms. Pinzon to work seven days a week, from open to close, from approximately 8:30 a.m. to 11:00 p.m.

22. Ms. Pinzon's job duties as assigned to her by Ms. Lara consisted primarily of bagging groceries and making deliveries to customers' homes. However, Ms. Lara also regularly

required Ms. Pinzon to perform additional duties, including sweeping and mopping the floors, cleaning and organizing the displays in the front of the store, and laundering the store's butcher coats at a nearby laundromat. Ms. Lara often required Ms. Pinzon to go out and pick up her lunch.

23. When she hired her, Ms. Lara told Ms. Pinzon that she would be paid only in customer tips, and handed her a small candy jar for her to place at her grocery bagging station. Some customers would place put their change in the jar, and most tips amounted to less than a dollar.

24. In addition to directing Ms. Pinzon in her work at La Mina, Ms. Lara required Ms. Pinzon to perform tasks for her outside of the store. For example, on one occasion Ms. Lara interrupted Ms. Pinzon's shift at La Mina and drove her to the Laras' home in New Jersey. Ms. Lara directed Ms. Pinzon to clean the entire house, which took about six hours. After Ms. Pinzon was finished, Ms. Lara drove her back to La Mina and had her finish her shift. Ms. Lara paid Ms. Pinzon about \$40 for cleaning the house, and Ms. Pinzon earned about \$10 in tips total for her shift that day.

25. Mr. Lara also regularly directed Ms. Pinzon in her job duties. For example, he regularly directed her to sweep the floors, put mail in the mailbox, or go and pick him up a cup of coffee.

26. Upon information and belief, La Mina's employees regularly handle goods and materials that have moved in interstate commerce. For example, many of the goods sold at La Mina, including meat, produce, dairy items, baked goods, canned and packaged food, beer, coffee, tea juices, household cleaners, kitchenware, laundry products and bathroom products, have been moved in or produced for commerce. In addition, upon information and belief, La

Mina employees regularly drive a Company-owned vehicle to purchase products at a large nationwide wholesaler. Moreover, upon information and belief, many of the items the employees used at La Mina, such as the janitorial supplies Ms. Pinzon used to clean the floors, originated out of state.

27. La Mina is located in a central area of Washington Heights, and is open seven days a week, from 8:30 a.m. to 11 p.m. The store saw a steady flow of customers during Ms. Pinzon's employment. It is across the street from a busy subway station entrance, and is conveniently located for customers who need to pick up items on their way to and from work. In addition, La Mina regularly delivers groceries to nearby customers' homes; for example, Ms. Pinzon would make approximately seven grocery deliveries per shift. Upon information and belief, La Mina's gross annual revenue is at least \$500,000.

Ms. Pinzon Earned only Tips for the Majority of her Employment

28. For the vast majority of her employment, Ms. Pinzon only earned money through the tips that customers left in the tip jar at the checkout line, or the tips she received from customers to whom she delivered groceries. She earned approximately \$30 to \$40 a day in tips, but received no pay from the Defendants.

29. Even though Ms. Pinzon's job barely brought in any income, she desperately needed the income that she was receiving. She also believed that if she stayed at the job long enough the Defendants would eventually begin to pay her. So, rather than be unemployed, she decided to put up with the long hours and no pay, and stayed at the job.

30. After approximately four-and-a-half years, in or around the end of 2013, Ms. Pinzon requested permission from Mr. Lara to take off one day a week. Mr. Lara approved her request, and allowed her to take Saturdays off.

The Defendants Paid Ms. Pinzon for a Five-Week Period in 2014

31. Shortly after she was given permission to take one day off every week, in or around the beginning of 2014, Mr. Lara called Ms. Pinzon to his office to speak with her. He admitted that he knew that he should have been paying Ms. Pinzon from the beginning of her employment, but that he had debts he needed to pay off and therefore could not afford to pay her for her work. He handed Ms. Pinzon four envelopes, each containing \$125 in cash. He told her that going forward, he would pay her \$125 every eight days. She informed him that she very much needed the income.

32. Immediately following that conversation, Ms. Pinzon noticed that Ms. Lara seemed angry with her. Ms. Pinzon asked her if something was wrong, and Ms. Lara told her she would speak to Ms. Pinzon later.

33. About two days after Ms. Pinzon met with Mr. Lara, Ms. Lara called Ms. Pinzon into the office she shared with her husband. She demanded to know why she had asked Mr. Lara for money, and told her that she would not be receiving any additional pay. She handed Ms. Pinzon an envelope containing \$125 in cash, and said that it would be the last pay that she would receive.

34. Ms. Pinzon explained that she had not asked Mr. Lara for money, and asked Ms. Lara if she was being fired. Ms. Lara responded that she was not firing Ms. Pinzon, but that she would continue to only be paid in customer tips from then on.

35. Shortly after that happened, Ms. Pinzon asked Ms. Lara if she could end her shift earlier, leaving between 8 p.m. and 9 p.m., rather than staying until the store closed. Ms. Lara approved her request.

Ms. Pinzon was Injured on the Job and was Forced to Stop Working Less than a Year Later

36. Finally, on or about March 17, 2015, after sustaining a workplace injury, Ms. Pinzon was forced to stop working.

The Defendants Failed to Comply with Wage and Hour Laws and Regulations

37. The Defendants did not inform Ms. Pinzon of her right to be paid the minimum wage.

38. The Defendants did not maintain any displays or postings on the premises of La Mina, informing her of her right to minimum hourly wage payments.

39. The Defendants did not inform Ms. Pinzon of her regular hourly rate of pay.

40. The Defendants did not inform Ms. Pinzon of her right to overtime pay for work performed in excess of 40 hours in one week.

41. The Defendants did not pay Ms. Pinzon an overtime premium for work in excess of 40 hours in one week.

42. The Defendants did not pay Ms. Pinzon any additional compensation for any days where her shift was longer than ten hours (“spread of hours” pay).

43. The Defendants did not pay Ms. Pinzon, nor did they provide her with written wage statements listing information required by New York Labor Law § 195(3), such as the dates of work the pay was meant to cover, Ms. Pinzon’s pay rate, and hours worked.

44. Upon information and belief, the Defendants failed to keep records of Ms. Pinzon’s pay or hours worked.

45. Upon information and belief, the Defendants knowingly, intentionally, and willfully committed the acts alleged herein.

FIRST CAUSE OF ACTION

(Unpaid Minimum Wage under FLSA)

46. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

47. At all times relevant to this action, the Defendants were Ms. Pinzon's employers within the meaning of 29 U.S.C. § 203(d).

48. The Defendants failed to compensate Ms. Pinzon at the applicable hourly minimum wage for all hours worked, in violation of 29 U.S.C. § 206(a).

49. The Defendants' violations of the FLSA, as described in this complaint, were willful.

50. Due to these FLSA violations, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, her unpaid minimum wages and an equal amount in the form of liquidated damages, as well as reasonable attorney's fees and costs of the action, all in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Claim for Minimum Wages under New York Labor Law)

51. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

52. At all times relevant to this action, with the exceptions noted above, Ms. Pinzon was employed by the Defendants within the meaning of New York Labor Law §§ 2(5), 190(2) and 651(5).

53. At all times relevant to this action, the Defendants were employers within the meaning of NYLL §§ 2(6), 190(3), and 651(6).

54. The Defendants failed to record, credit and compensate Ms. Pinzon the applicable minimum hourly wage, in violation of the New York Minimum Wage Act, NYLL § 652, and all applicable regulations.

55. The Defendants' violations of the New York Labor Law, as described in this complaint, were willful.

56. Due to these violations, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, her unpaid minimum wages and required allowances and an amount equal to 100 percent of her unpaid minimum wages in the form of liquidated damages, as well as reasonable attorney's fees and costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Claim for Overtime Wages under FLSA)

57. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

58. The Defendants failed to pay Ms. Pinzon overtime wages for hours worked in excess of 40 hours per week at a wage rate of one-and-a-half times either her regular rate of pay or the minimum wage rate to which she was entitled, whichever was higher, in violation of 29 U.S.C. § 207(a)(1).

59. The Defendants' violations of the FLSA as described in this complaint have been willful.

60. Due to these FLSA violations, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, her unpaid overtime wages and an equal amount in the form of

liquidated damages, as well as reasonable attorney's fees and costs of the action, all in the amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Claim for Overtime Wages under New York Labor Law)

61. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

62. The Defendants failed to pay Ms. Pinzon the minimum wage for hours worked in excess of 40 hours per week at a wage rate of one-and-a-half times either her regular rate of pay or the minimum wage to which she was entitled to receive under NYLL § 652, whichever was higher, in violation of 12 NYCRR § 142-2.2.

63. The Defendants' violations of New York Labor Law, as described in this complaint, have been willful.

64. Due to these violations of New York Labor Law, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, her unpaid overtime wages and an equal amount in the form of liquidated damages, as well as reasonable attorney's fees and costs of this action, and pre-judgment interest, all in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Claim for Spread of Hours Payments under New York Labor Law)

65. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

66. Under New York law, an employee is entitled to an extra hour of wages for any day when the employee's "spread of hours" exceeds ten hours. 12 NYCRR § 142-2.4. "Spread

of hours” is defined as “the interval between the beginning and end of the workday” and includes time off for meals and intervals off duty. 12 NYCRR § 142-2.18.

67. The Defendants required Ms. Pinzon to work a shift longer than ten hours a day for the entire duration of her employment, but did not pay Ms. Pinzon the required additional compensation for any days during which her shift exceeded ten hours.

68. The Defendants’ violations of the New York Labor Law, as described in this complaint, have been willful.

69. Accordingly, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, all spread of hours payments in the form of one hour of additional pay at the minimum wage rate for each day in which Ms. Pinzon’s spread of hours exceeded ten hours, as well as liquidated damages, reasonable attorney’s fees and costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

(Claim for Failure to Provide Pay Statements under New York Labor Law)

70. Ms. Pinzon realleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

71. New York Labor Law requires employers to provide employees with a statement provided along with every payment of wages, listing, *inter alia*: the dates of work covered by that payment of wages; rate of pay; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. NYLL § 195(3). In addition, for employees not exempt from overtime compensation, the statement must include an employee’s regular hourly rate, overtime rate, number of regular hours worked, and number of overtime hours worked. *Id.*

72. The Defendants failed to provide Ms. Pinzon with the required written statement of her wages.

73. The Defendants' violations of New York Labor Law, as described in this Complaint, have been willful.

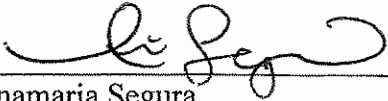
74. Accordingly, Ms. Pinzon is entitled to recover from the Defendants, jointly and severally, damages of \$250 for each work day that the violations occurred or continued to occur, up to \$5,000, pursuant to NYLL § 198.1-d., together with reasonable attorney's fees, costs of the action, and pre-judgment interest, all in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request this Court grant the relief requested as follows:

1. Declaring the Defendants' conduct complained of herein to be in violation of Ms. Pinzon's rights under the Fair Labor Standards Act and the New York Labor Law;
2. Awarding Ms. Pinzon unpaid wages;
3. Awarding Ms. Pinzon liquidated damages;
4. Awarding Ms. Pinzon pre-judgment and post-judgment interest;
5. Awarding reasonable attorney's fees, costs, and expenses; and
6. Ordering such other and further relief that the Court deems just and proper.

Dated: January 21, 2016
New York, New York


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